(1)

Supreme Court, U.S.
FILED

03 797 NOV 22 2003

No.

IN THE SUPREME COURT OF THE UNITED STATES

RAYMOND J. CASCELLA, Petitioner

v.

CANAVERAL PORT AUTHORITY

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
PETITION FOR WRIT OF CERTIORARI

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84 pp

QUESTIONS PRESENTED

Does State of Florida Administrative factfinding along with State Fire Marshal Inspection have a preclusive effect in Federal Bankruptcy adversary action?

Can the Bankruptcy Court ignore the Rooker-Feldman Doctrine and the Eleventh Circuit Jetco Exception on a policing action that was a firewall issue between the debtor's tenant, himself and a Florida State Agency that reached settlement and final approval by inspection of a State Fire Marshal?

Does title 28 U.S.C. 1452 expressly prohibit removal of a policing issue or regulatory action of a state to Bankruptcy Court by a creditor?

Can a Bankruptcy Court give judgment in favor of a landlord who is a State Special District for $95,000 in attorney and costs that is due to pecuniary private rights in a contract which then gives preferential treatment to the detriment of all other creditors which is a violation of the automatic stay Title 11 sec. 362(4) and (5) and now creates a lien against the property of the estate?

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PETITION FOR A WRIT OF CERTIORARI

Raymond J. Cascella respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for Eleventh Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals, the District Court and Bankruptcy Court are in the Appendix 1, 8 and 9.

JURISDICTION

The judgment of the court of appeals was entered on July 03, 2003 and the petition for rehearing was denied on September 02, 2003. This court's jurisdiction is under Article II of the Constitution of the United States as well as 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Full Faith and Credit Clause provides that:

Full Faith and Credit shall be given in every State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may be general Laws prescribe the Manner in which such Acts, Records and Proceedings may be proved, and the Effect thereof.

U.S. Const., Art. IV, & 1. The Full Faith and Credit statute provides in relevant part that:

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken. 28 U.S.C. 1738.

RULE INVOLVED

Federal Rule of Civil Procedure 17(a) applies.

STATEMENT

This case involves the petitioner, Mr. Raymond Cascella, hereafter Cascella and the Canaveral Port Authority, hereafter "CPA". The CPA is a marine terminal operator in Florida and a political subdivision created by a State of Florida Legislative Act. Cascella did own a commercial building free and clear on the CPA's land which he leased. He sub leased to a corporation Manos, Inc. that ran the DBAs Seaport Restaurant and Lighthouse Lounge. He was the sole shareholder. Individually he ran a boat storage yard and leased to himself and one Mr. Jeff Woods, space for a tackle and bait shop in the same commercial building. The square footage was small and complied with the State of Florida Statutes that invoked the corporation restaurant license to come under the control of the Florida Department of Business and Professional Regulation, Division of Hotels and Restaurants which is an agency of the sovereign- the State of Florida. See Appendix A- 18, Notice To Show Cause. There was an issue over firewalls with the licensee not the petitioner Cascella. There was an on-going feud with the new port commissioners and staff over firewalls. Mistakenly they terminated the lease and sued in county court. That court was the proper court by Fla. Statutes through Chapter 633. Statute 633.022 Uniform Fire Safety Standards section 1 (b) provide:

" All new, existing, and proposed hospitals, nursing homes, assisted-living facilities, correctional establishments, public food services, transient public lodging establishments, public food service establishments, elevators, migrant labor camps, mobile home parks, lodging parks, recreational vehicle parks, recreational camps, residential and non-residential childcare facilities, facilities for the developmentally disabled, motion picture and television special effects productions, and self-service gasoline stations, of which

standards the State Fire Marshal is the final administrative interpreting authority. With respect to public schools, the department shall utilize fire safety standards that have been adopted by the State Board of Education".
Also 2(a) says: "With respect to the uniform fire safety standards, the department shall develop uniform statewide standards which are reasonably prudent with respect to protecting life, safety, and property and which take into consideration the characteristics of the people utilizing the subject buildings and structures and other hazards associated with the subject buildings and structures through the state".

It is clear by this and the AGO 86-81- September 22,1986 report MUNICIPALITIES, STATE OF FLORIDA ATTORNEY GENERAL'S ANNUAL REPORT that the sovereign and its rules in the Chapter govern the corporate restaurant on fire safety standards. Also, Florida law places the State Fire Marshal in the Department of Insurance. See Appendix A-27 through 35.

Cascella' s building was used as a restaurant by the previous owner and had a shell shop. Cascella changed out the shell shop to a bait and tackle shop. The square footage was at the minimum and it did not need two hour fire rated walls. The same analogy occurs in Florida with a hotel and its gift shop. You do not need a two hour separation.

While this controversy was going on with the landlord who believed that Cascella was responsible, the issue was really between the sub-tenant corporation restaurant and the law. The law calls for an injunction and a revocation of the Restaurant License to protect the public. This can only be done by the state agency not the CPA as a landlord or political subdivision.
The CPA filed a lawsuit in county court on a 633.022 Uniform Fire Safety Standards for an eviction. Cascella filed

a Declaratory Action over this issue against the CPA in October of 1996. Eventually the CPA let their suit be dismissed by the Clerk of the Court with a hearing. By this time the CPA had realized by their contract with the Cape Canaveral Volunteer Fire Department, Inc. (App) that their licensed Fire Marshal is the authority to start a county lawsuit over a 633.022 action and not them. The local fire marshal must determine if there is a threat to life safety or property. This resulted in the Notice To Show Cause appendix against the licensee restaurant Case No 04-97-021. Cascella individually was forced to petition the agency himself to stop the CPA from wrongfully attacking him and his lease with eviction over the "firewall" issue that was not legally their concern as well as hire a lawyer for the licensee corporation Manos Inc. Appendix Finally there was an order closing the file because the parties executed a settlement and consent order. And the licensee passed a re-inspection of Seaport Restaurant by James Watson, Fire Marshal. Contemporaneously the CPA evolved a new tax scheme and Cascella who paid only an advolerm real estate tax on the building to the county, was being charged by the CPA which he believes is an illegal bill, for the new tax on the land the C PA is obligated to pay. This argument resulted in a state lawsuit over eviction. Cascella filed Chapter 13 Bankruptcy to stop the eviction. While in bankruptcy the CPA removed to Bankruptcy court Cascella' s Declaratory case and it became Adversary 99-0107 inside his case in the Middle District of Florida 99-02900-6b3. The policing issue was once again argued. It was re-litigated, Bankruptcy Judge Briskman asked the parties to file Post Trial Brief. Cascella did and argued again before that court that the issue was finalized and barred by the doctrine of res judicata. Cascella' s attorney cited appropriate case law. The issue was heard by Florida Division of Administrative Hearings. App

Bankruptcy judge ruled in favor of the CPA and created a lien on the estate for *$95,000.00.* This was for *$25,000.00* cost the CPA incurred just for the adversary proceeding and *$70,000.00* for attorney fees.

Cascella as pro se appealed to the local District court and part of the appeal was that issue preclusion applied through the Rooker-Feldman Doctrine as a form of res judicata and collateral estopel as well as an abstention doctrine of a policing or regulatory action would apply.

Losing once again, as a pro se he appealed to the Eleventh Circuit of Appeals in Atlanta. On the issue of res judicata he added their very own "Jetco Exception". They said he did not show another case besides the dismissed fire wall case and affirmed. Cascella filed for a rehearing and showed in the record Doc 51 & 53. This was the order of closing the state Administrative case, and the Fire Marshals re-inspection showing no violations all before he filed his Bankruptcy petition. Also he argued before the Eleventh Circuit that Title 28 sec 1452 that a policing or regulatory power issue can not be removed to bankruptcy court or district court. He lost that issue too.

Cascella's other creditors pre-petition was a *$9,000.00* balance on an SBA business loan and a credit card. The building purchased for $225,000.00 had no mortgage. Eventually with the new lien of *$95,000.00* Cascella tried to sell his lease and the CPA, at a Commission Hearing, refused to assign it even though they would have been paid the *$95,000.00* from the sale. Instead they filed and lifted the 362 stay and evicted Cascella and without due process evicted three subtenants of his by a force of arms of their security apparatus. So now Cascella who bought the building in 1991 has lost his investment money and his life's work.

REASONS FOR GRANTING THE PETITION

There is a square conflict between the Eleventh Circuit and all of the remaining Federal Appellate Circuits and the Supreme Court of the United States regarding the First question presented. It is clear no legal and factual issue can be re-litigated in Bankruptcy Court after a pre-petition settlement and a administrative court order on the Fire Wall Issue that closed the case. The supreme authority, the local Fire Marshall upon re-inspection passed the corporate licensee and individual debtor's property at 680 George King, Port Canaveral, Florida. A-24. The last act by the Fire Marshall James Watson was April 1 6,1998. This was before petitioners Chapter 13 petition for Bankruptcy on April 6,1999. The Eleventh Circuit's ruling throws the law governing State Administrative Law settlements into complete confusion. The State Fire Marshall is the final administrative interpreting authority. And its clear by the ACO 86-81- September 22, 1986 report Municipalities, State Of Florida Attorney General's Annual Report that Chapter 633.022 is a policing action and a second degree criminal misdemeanor. Now the Eleventh Circuit rules that a Marine Terminal Operator, the Canaveral Port Authority can re-litigate this issue and facts as a "Landlord-Tennant dispute". Petitioner is correct by the law because there is a preclusive effect that a settlement can not be re-litigated in Federal Court. It has been a long standing rule in all of the other Federal Circuit Courts and the Supreme Court that United States Codes 28 section number 1738- state and Territorial statutes and judicial proceedings; full faith am credit directs all United States courts to afford the same full faith and credit to state court judgments that would apply in the state's own courts- to give preclusive effect to state-court decisions upholding the state administrative courts rulings. The Supreme Court held this in ROBIN KREMER V CHEMICAL CONSTRUCTION CORPORATION 456 US

461, 72 L. Ed. 2d 262, 102 S. ct. 1883 Decided May 17,1982.

The Supreme Court later said the same thing in UNIVERSITY OF TENNESSEE

v. ROBERT B. ELLIIOT 478 US 788, 92 L Ed 2d 635, 106 S.ct. 3220

Decided July 7,1986. The court said "That when a state agency acting in a judicial capacity resolves disputed issues of fact proper I y before it which the parties have had an adequate opportunity to litigate, federal courts must give that agency's factfinding the same preclusive effect to which it would be entitled in the state's courts.

REASON FOR GRANTING THE PETITION AS QUESTION TWO

The petitioner had to became pro se after the bankruptcy courts ruling that the debtor, needed firewalls. The court completely overlooked the fact that it was his sub-tenant Manos, Inc. another person, who owned the Seaport Restaurant and was licensed by the Florida Hotel and Restaurant Agency. Upon initial appeal to the District Court of the Middle District one of the arguments was that the CPA committed a Fraud by removing the Declaratory State Relief action that the petitioner had to win on an interlocutory appeal of final nature that he had a due process right to have a trial for an injunction, OF A TAX ISSUE. In essence the CPA manufactured jurisdiction. This court turned down the intersystem preclusion of res judicata and collateral estoppel of the fire wall issue being settled pre-petition in an administrative court of the State of Florida. Debtor petitioner's lawyer petitioned for the Corporation restaurant as well as Cascella, who as an individual, was not on the administrative order to show cause. The purpose was to protect Cascella from the CPA who wanted the lease back without paying for it to allow for their own expansion plans

for which that they paid $75,000.00. They docked a gambling boat across the street and needed parking, having used up all their vacant parcel and did not want to buy back the boatyard acreage. Their method as a landlord who was also a special district was to terminate the lease by a commission meeting without filing a lawsuit for eviction. Though a lot of this was in the Declaratory relief action they would call for multiple inspection from outside agencies as well as dream up their interpretation of code violations that were statutory in nature. They even had the security pull restaurant customers over after they left and would tell them not to go back to eat. The Eleventh Circuit in CSX TRANSPORTATION, INC. v. CITY OF GARDEN CITY 235 F3d 1325(11th Cir 2000) said" Under Jetco exception to finality rule, series of court orders, considered together, may be said to constitute final judgment if they effectively terminate the litigation 28 U.S.C.A 1291".

Yet their order says appellant showed no other case other than the dismissed case. The administrative case was in the record (read Cascella' s initial brief and petition for rehearing). Petitioner directly by citing the record before Judge Young and now the Eleventh Circuit stating the settlement order, the administrative judges order closing the file and the re-inspection report by the FIRE MARSHAL Watson.

Throughout the appeal before Young, the petitioner applied the Rooker-Feldman doctrine that was res judicata and issue preclusion that was in:

1. His post trial brief as required by the Judge Briskman of the Bankruptcy Court before the judge made is ruling. Which was fully briefed with case law.
2. The issue of Rooker-Feldman before the District Court
3. The issue of Rooker-Feldman and now the Jetco Exception before the Eleventh Circuit.

The Supreme Court in PITTSBURGH PLATE GLASS COMPANY v. NATIONAL LABOR REL. BO. 313 US 146 said " the entry of an order upon stipulation and consent does not detract from its force. 85L ed 1251".

The Eleventh Circuit in its own case GOODMAN EX REL. GOODMAN v SIPOS 259 F. 3d 1327 (11 th Cir. 2001) said" Rooker-Feldman doctrine provides that federal courts, other than the United States Supreme courts, have no authority to review the final judgments of state courts; doctrine extends not only to constitutional claims presented or ajudicated by a state court, but also to claims that are "inextricably interwined " with a state court judgment" The firewall was interwined with a state administraive order and the authority of the Fire Marshal Watson. This doctrine places limits on the subject matter jurisdiction of Federal District Courts and Courts of Appeal See ROOKER v. FIDELITY TRUST CO. 263 U.S. 413, 415-16, 44 S.ct. 149, 150, 68 L.Ed. 362(1923) And DISIRICT OF COLUMBIA COURT OF APPEALS v. FELDMAN, 460 U.S. 462

476-82,103 S.ct. 1303, 1311-15,75 L.Ed. 2d 206(1983).

_The "FireWall" issue" is "inextricably interwined" with the settlement and order of the Florida Administrative Judge and its court. The CPA raised its concern through the proper procedure; First contacted the Fire Marshal and have the licensee face administrative action. It was wrong to make their leasee who sub-rented the space in his building to Manos, Inc. a defendant in a lease eviction action. He is not the violator by Florida Law. And only the FireMarshal can determine if there is a public safety problem. The bankruptcy court order ruled against Mr. Cascella and the judge failed to rule that the state administrative court wrongly decided the issue before it. In Arguendo that his court could even appeal at Federal Level an Administrative Court order and the Fire Marshal's approval. Before Judge Young, the District

Judge, the Petitioner Cascella also argued the BURFORD ABSTENTION DOCTRINE. This doctrine requires a federal court to defer to state tribunals when litigation involves a complex and comprehensive state administrative statutory scheme. BURFORD v. SUN OIL CO.319 U.s. 315 325-327,63 S. Ct. 1098, 87 L. Ed. 1424(1943)

One of the reasons is that the likelihood that a federal court will make erroneous interpretations of state law.

When you read the Post Trial Brief in Bankruptcy court it include Life Safety Codes and Building Codes of the State of Florida. Truly the material and facts where above the courts jurisdiction. The lower court was estopped from these issues but the District court ruled against Cascella. In the following Circuits the Rooker-Feldman Doctrine applies on the merits and not a final state court judgments.

2d Circuit See Campbell v Greisberger, 80 F3d 703, (2d Cir 1996)

5thCircuit See Hale v Harney 786 F. 2d 688, -691 (5th Cir 1986)

6th Circuit See Urlited States v OwerlS, 54 F.3d 271,274 (6th Cir)

7th Circuit See Leaf v Supreme Court of Wis. 979 F. 2d 589, (7th Cir 1992)

8th Circuit See Charchenko v. City of Stillwater 47 F3d 981 (8th Cir.1995) D.C. Circuit See Richardson v District of Columbia Court of Appeals 83F3d 1513 (D,Cir 1996)

However, this circuit, the Eleventh, in NAREY v. DEAN, 32 F.3d 1525(11th Cir. 1994) said" unlike res judicata, Rooker-Feldman does not apply to unreviewed state administrative decisions.

This compelling reason that the Eleventh Circuit has entered a decision in conflict with the decisions of the other Circuits of Appeal and the Supreme court necessitates this court to issue a writ of Certiorari.

Also, notforgetting the Eleventh Circuit refuses for some unknown reason to accept the administrative court action as part of the record even on Petition for Rehearing showing the docket numbers of the record and giving them copies of the settlement, the order and the Fire Marshal's inspection report.

REASON FOR GRANTING THE PETITION TO QUESTION THREE

Petitioner in bankruptcy court was ruled on the issues of firewalls. This is a policing action. It is clear that the CPA used Fla. Sta. 633.022 of which the AGO 86-81-September 22, 1986 report which is in the appendix states that this is a policing statute and second degree as a criminal misdemeanor. Petitioner in his appeal before the Eleventh Circuit argued that the panel made a presedenting-setting error of exceptional importance because its interpretation of Title 28. U.S.C. Section 1334 and 1334(b) is not applicable. What is applicable is section (c). The federal court- the bankruptcy court did not have jurisdiction and must abstain. Congress later made Title 28 sec 1452 so it is clearly stated that a policing action or a regulatory action cannot be removed to federal district court, which is also bankruptcy court.

Though the Eleventh Circuit characterizes it as a simple landlord- tenant dispute, the issue is nevertheless a firesafety issue that is a policing action with the consequences of criminal penalties.

The court in RABZAK, Debtor. Bankruptcy No.82-04003 United States Bankruptcy Court E.D. Pennsylvania Nov 19,1987, 79 Bankruptcy Reporter said: " We need not determine whether the subject of the summons is a core proceeding 28 U.S.C. 1452 expressly prohibits removal of civil actions by governmental unit to enforce police or regulatory powers. This is what the CPA did and the Bankruptcy Judge Briskman ordered fire walls.

The court in Pacific Gas 7 Elec Co. 281 B.R.1 (Bkrtcy N.D. Cal 2002) said on pg 2: "Claims asserted by California Attorney General and California municipality under the Unfair Competition Act, for debtor-utility's allegedly unlawful, unfair, and fraudulent pre- petition business acts and practices were in the nature of claims asserted under California's police and regulatory power, that were designated to protect public rather than to benefit private parties arrl were not removal to federal court as result of debtor's Chapter 11 filing 28 U.S.C.A. 1452(a).

Also in CUMBERLAND FARMS INC. Appellant v. FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION 116 F3d 16 (1st Cir 1997) said " Bankruptcy court was not proper forum to determine debtor's compliance with state petroleum liability insurance program". The statute used in Petitioner's Bankruptcy case is a "fire marshal statute" whose compliance comes under the Department of Insurance and through Florida state agencies. Just like Cumberland Farms action came under the Dept of Insurance, so does the FireWall issue because the FireMarshal authority derives from the Department of Insurance including educational courses and testing, as well as regulatory and policing. Chapter 633 is specifically for public restaurants which was the case of the Seaport Restaurant which the landlord **DID NOT OWN**. The State, if there was a firewall violation, suspends the license and closes the restaurant. This has no effect on the petitioner's bankruptcy estate. The corporation Manos Inc. owned Seaport Restaurant and not the debtor. What was removed to Bankruptcy court was debtors state Declaratory Action and the Federal Court ended up making policing orders.

The Eleventh Circuit has decided an important question of federal law that has not been, but should be, settled by the Supreme Court.

REASON FOR GRANTING THE PEITION TO QUESTION FOUR

The net result to the estate was a judgment and a post petition lien created for $70,000 in attorneys' fees and $25,110 in costs for the removed action.
There is a very fundamental error made by the Eleventh Circuit and the Bankruptcy Court itself. This error is that there was a violation of the AUTOMATIC STAY.
Title 11 sec 362 (3) prevents "any act to obtain possession of the property of the estate or of property from the estate or to exercise control over the property of the estate. Also sec (4) prevents any act to create, perfect, or enforce any lien against property of the estate; thus in reality the court did create a lien for the benefit of the CPA.

As a political subdivision the CPA could only have the firewall issue heard if its proceeding was an exception to"enforce" its police or regulatory powers. However in the bankruptcy court what was adjudicated was their private rights by seeking tenant eviction and the $90,000.00 for attorney fees and cost of the adversary action. Legally the policing action could not be heard before Judge Briskman in Bankruptcy Court.

In re Gibbs, 9.B.R. 758 (bankr. D. Conn.1981), 76 B.R. 257(D.Conn.1983) the court concluded "that the City Housing Authority is not enforcing a regulatory power when it seeks to evict a tenant pursuant to a judgment for possession based on nonpayrnent of rent. Even if the Authority were exercising a regulatory power, it would be subject to stay provisions of 362(a) (3).

In MISSOURI v. UNITED STATES BANKRUPTCY COURT 647 F.2d. 768 (8th Cir. 1981)cert. denied 454 U.S. 1162, 102 S. ct. 1035,71 L.Ed.2d 318(1982). there was a pecuniary-purpose test. The issue is the governmental action attempting to "fix damages for violations". It was not in that

case. It was trying to sell off grain. In this petition case the CPA wanted eviction and costs and attorney fees. Not a fine for breaking police or regulatory law. Judge Briskman ruling gave preferential treatment to the CPA to the detriment of all other creditors by illegally creating a new lien.

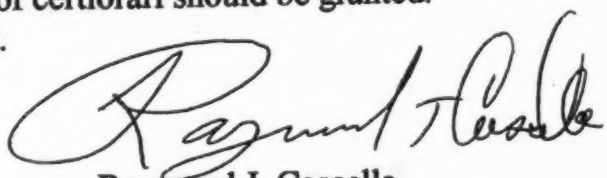
The court inRe Corporation de Servicious Medicos Hosp. 805 F. 2d. 440 (1 st Cir 1986). said "where the private hospital was sued by Puerto Rico to cancel contract and filed bankruptcy, the court said 362 (4) and (5) applies. They also said the exception applies exclusively only to actions enforcing generally applicable regulatory laws not to actions to enforce contractual rights against debtors even though" RELATED TO THE STATE'S GENERAL REGULATORY POWER.

The same application of law was applied by the courts in Board of Co. Commissioners v~Fairfield Communities, Inc. 122 B.R. 128(D.Colo1990) In RE NORTH, 128 B.R. 592 (Bankr. D. VT. 1991); In Re PUB DENNIS OF MINERAL SPRINGS AVENUE INC. 126 B.R. 903,(Bankr.D.R.I 1991); In Re WELLHAM, 53 B.R. 195 (Bankr. M.D. Tenn. 1985); In Re Ellis 66 B.R. 821 (N.D. ILL. 1986); RENT A TAINMENT,INC. v.UNITED STATES 119 B.R. 80, (E.D. VIR. 1990). In Re NELSON 123 B.R. 931 (Bankr.D.S.D. 1991); In re Apex Oil Co. 122 B.R. 559(Bankr. E.D. Mo. 1990). In the matter of Ballentine BROS. INC. 86 B.R. 198(Bankr. D.Ne 1988). In Re. GREENWALD 34 B.R. 954, (Bankr. S.D.N.Y. 1983).; HECKLER LAND DEV. CORP. v.MONTGOMERY, 15B.R. 856 (Bankr. E.D. Fa. 1981.). The record in 1 24 Cong. Rec. H 11089, Sept. 28, 1978 (statement by Cong. Edwards) reprinted in 1978 U.S. Code Cong. & Admin. News 6444-45; the
Stay "by (b) (4) does operate against governmental action to protect pecuniary interest.

The Eleventh Circuit has decided an important question of bankruptcy law that has not been, but should be settled by the Supreme Court.

CONCLUSION

The petition for a writ of certiorari should be granted.
Respectfully submitted.



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IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENI'H CIRCUIT

No. 03-10189 Non-Argument Calendar

D.C. DOCKET NO. 01-00558-CV-O~19 **Fll.ED**

U.S. COURT OF APPEAL ELEVENTH CIRCUIT

JULY 3,2003 THOMAS K. KAHN CLERK IN RE: RAYM)ND J. CASCELLA, Debtor----------
RAYM)ND J. CASCELLA, Plaintiff-Appellant, versus
CANAVERAL PORT AUTHORITY, Defendant-Appellee
Appeal from the United States District Court
for the Middle District of- Florida (July 3,2003)
Before TJOFLAT, BIRCH and WILSON, CircuitJudges

PER CURIAM : Rayirond J. Cascella, proceeding pro se, appeals the district court's order finding that a state adversary proceeding against Canaveral Port Authority (CPA) was removed properly to bankruptcy court and that the bankruptcy court had subject matter jurisdiction over the removed proceeding pursuant to 28 U. S.C. sec 1452(a). He argues that the bankruptcy court lacked jurisdiction, because (1) the removed state case was a "police or regulatory" matter not subject to removal under 1452 (a) ; 1 and (2) the state court's dismissal for lack of prosecution of an earlier cause of action seeking Cascella' s eviction2 deprived the bankruptcy court of jurisdiction under the Rooker- Feldman3 doctrine and the Jetco 4 exception to the finalty rule. 1 Although Cascella makes this argument for the first time on appeal, "parties cannot waive subject matter jurisdiction, and we may consider subject matter jurisdiction claims at any time during litigation." Scarfo V. Ginsberg, 175 F.3d 957, 960 (11th Cir.1999). 2 CPA commenced an eviction action against Cascella in state court before Cascella brought the instant action seeking a declaratory judgment and damages. After Cascella brought the instant action, CPA allowed the earlier eviction action to be dismissed for failure to prosecute and pursued the eviction as a

counterclaim. 3 Dist. of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983); Rooker v Fid. Trust Co., 263 U.S. 413 (1923). 4 Jetco Elec. Indus., Inc. v. Gardiner, 473 F. 2d 1228 (5th Cir. 1973) abrogated on other grounds by United States v. Cooper, 135 F. 3d 960 (5th Cir. 1998).

"[We] review [ ] jurisdictional issues and other questions of law de novo" See Peterson v. BMI Refractories, 124 F.3d 1386,1390 (11th Cir. 1997). Cascella argues that the bankruptcy court lacked jurisdiction, because the removed state case was a "police or regulatory" matter not subject to removal under 1452(a). Section 1452(a) provides, A party may remove any claim or cause of action in a civil action other than a proceeding before the United States Tax Court or a civil action by a governmental unit to enforce such governmental unit's police or regulatory power, to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334. 28 U.S.C. sec 1452(a). Section 1334 provides that district courts " have original but not exclusive jurisdiction of all civil proceedings under title 11, or arising in or related to cases under title 11." 28 U. S.C. sec 1334(b). To determine whether a civil action is related to a bankruptcy proceeding for purposes of 1334(b), we consider whether " the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankruptcy estate." In re Lemco Gypsum, Inc., 910 F. 2d 784,788 (11th Cir. 19 90) (internal quotations marks omitted). Thus, if a civil action does not fall within the exceptions in 1452(a) and is related to a case under Title 11, a district court may exercise jurisdiction upon removal of the action. See 28 U.S.C. sec 1452 (a). As "the district courts may, in turn, refer any or all proceedings arising in or related to a case under title 11... to the bankruptcy judges for the district," a bankruptcy court also would have jurisdiction if those conditions were met. Celotex Corp. v Edwards,

514 U.S. 300,307 (1995) (second alteration in original) (internal quotation marks omitted) . Contrary to Cascella' s assertion, the removed action does not fall within the exception for actions by governmental units seeking to enforce their "police or regulatory power." 28 U.S.C. sec 1452(a). Indeed, it arose out of a landlord-tenant dispute between Cascella and CPA regarding Cascella' s obligation under the lease; Cascella initiated the action in state court, seeking a declaratory judgment and damages for breach of quiet enjoyrnent and CPA counterclaimed, seeking his eviction. As this case clearly does not fall within the exception set forth in 1452(a), we must ask whether it is related to Cascella's bankruptcy case, because "it is conceivable that the outcome of this proceeding may have an effect on [his] estate." In re Olympia Holding Corp., 215 B.R. 254, 256 (Bankr. M.D. Fla. 1997). Thus, the bankruptcy court has jurisdiction. Cascella also argues that the bankruptcy court lacked jurisdiction, because a state court dismissed an earlier eviction against him for lack of prosecution, thereby depriving the bankruptcy court of jurisdiction under the Rooker-Feldman doctrine. "The Rooker-Feldman doctrine provides that federal courts, other than the United States Supreme Court, have no authority to review the final judgments of state courts". Siegel v Lepore, 234 F.3d 1163, 1172(11th Cir. 2000) (en banc) (per curiam) (emphasis added). The dismissal of the earlier eviction action in state court for lack of prosecution, however, was not a final adjudication on the merits. See Southeast Mort gage Co. v . Sinclair, 632 So. 2d 677,678 (Fla. Dist.Ct. App. 1994) (A dismissal for lack of prosecution" is not an adjudication on the merits."). Thus, the bankruptcy court was not barred from adjudicating the removed civil action under the Rooker-Feldman doctrine Although the state court's dismissal was not final, Cascella argues that the Jetco exception to the finality rule applies to the dismissal of the earlier eviction action. Jetco established that"a series of court orders, considered together, may be said to constitute a final judgment if they effectively terminate the. litigation". CSX Transp., Inc. v. City of Garden City, 235 F. 3d 1325,

1327(11th Cir. 2000). Cascella' s argument lacks merit, however, because he does not cite to any documents in the record that, considered with the dismissal, would have the effect of a final judgment. Therefore, the district court correctly concluded that the previous state court dismissal of CPA's eviction action did not divest the bankruptcy court of jurisdiction. Accordingly we AFFIRM.

ADDENDUM: THIS ADDENDUM **is entered into this 22nd day of April, 1996 by and between** THE CANAVERAL PORT AUTHORITY, FLORIDA, **hereinafter called the** "Port", **and the CAPE CANAVERAL VOLUNTEER FIRE DEPARTMENT, INC., a non-profit Florida corporation, hereinafter called the "Corporation". WITNESSETH** WHEREAS, **the Port desires that the Corporation undertake to provide the services of the Fire Inspector for the Port.** NOW, THEREFORE, **in consideration of the mutual covenants and agreements herein, contained, the parties agree as follows:**

1. **Recitals**. The parties agree that the above recitals are true and correct and incorporated into the body of this Agreement by this reference.

2. **Additional Services.** Paragraph 9 of the Contract is amended to provide the following new sub- paragraph (e): "(e)" The Corporation shall provide the services of a Fire Safety Inspector. The Fire Safety Inspector shall perform those services on behalf of the Port as are set forth in Section 633.052(1) (a), Florida Statute.

3. **Price Revision**. Paragraph 13 of the Contract is amended to read as follows: The Port agrees to pay to the Corporation the sum of $7,500.00 for the period from April 17,1996 through September 30,1996. Said compensation shall be paid equally in monthly installments of $1,500.00 beginning May 1,1996. These installments shall be included in the basic contract installment.

4. **Continuing Effect.** Except as modified by this Addendum, the Contract shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned CANAVERAL PORT AUTHORITY, by its duly authorized officers, has executed this instrument, this 22nd of April, 1996. **CANAVERAL PORT AUTHORITY** By: /s/ RALPH J. KENNEDY, Chairman ATTEST: /s/ DONALD N. MOLITOR, Secretary/Treasurer (SEAL) IN WITNESS WHEREOF, the undersigned CAPE CANAVERAL VOLUNTEER FIRE DEPARTMENT, INC., a non-profit corporation, by its authorized officers, has executed this Agreement this 22nd day of April ,1996. CAPE CANAVERAL VOLUNTEER FIRE DEPARTMENT, INC. (a non-profit corporation)

IN THE CIRCUIT COURT, EIGHTEENTH JUDICIAL CIRCUIT, BREVARD COUNTY, FLORIDA CASE NO.: 96-16568-CA-N RAYMOND CASCELLA, Plaintiff, vs. CANAVERAL PORT AUTHORITY, etc., Defendant. PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS COMES NOW the Plaintiff, RAYMOND CASCELLA , and pursuant to Rule 1.370, Florida Rules of Civil Procedure, hereby propounds the following requests for admissions to the Defendant, CANAVERAL PORT AUTHORITY: ADMISSIONS REQUESTED:

1. Attached hereto as Exhibit " A" is a true copy of correspondence from James Watson, Fire Marshal, Cape Canaveral Fire Department, to Ray Cascella, who is the Plaintiff in this action.

2. On Apri1 16, 1998, a Fire Safety Inspection of the premises located at 680 Gcorge King Drive in Port Canavera1, Florida was conducted by the Cape Canaveral Fire Department.

3. The fire safety inspection referenced in Request for Admission number 2., above, was a fire safety inspection of the leasehold property which is the subject of this action.

4. As of April 16, 1998, there were no fire safety violations existing on the leasehold premises at 680 George King Drive, Port Canaveral.

CERTIFICATE OF.SERVICE

I HEREBY CERTIFY, that a true copy of the foregoing was served by United States Mail and telefax transmission this 1st day of April, 1999, upon Harold T. Bistline;

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT IN AND FOR BREVARD COUNTY, FLORIDA CASE NO. 96-1656B-CA-N RAYMOND CASCELLA, plaintiff, vs. CANAVERAL PORT AUTHORITY, a political subdivision of the State of Florida, Defendant.

DEFENDANT'S RESPONSE TO PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS

Defendant, CANAVERAL PORT AUTHORITY, a political subdivision of the State of Florida, by and through its undersigned attorneys,

admits requests 1, 2, 3, and 4 of Admissions requested and served on Defendant April 1, 1999.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Allen C.D. Scott, II, Esquire, 101. Orange Street, St. Augustine, Florida, 32084, thi,s 3rd day of May, 1999. STROMIRE, BISTLINE, MINICLIER & GRIFFITH, s/ Frank J. Griffith, Florida Bar No. 151350, P. O. Box 8248, Cocoa, Florida 32924-8248 Telephone: (407) 639-0505 Attorneys for Defendant

CAPE CANAVERAL VOLUNTEER FIRE DEPARTMENT,INC. - Serving the City of Cape Canaveral & Canaveral Port Authority TO: Ray Cascella FROM: James

Watson, Fire Marshal .. - SUBJECT: Fire Safety Inspection 680George King DATE: April 16, 1998 On the above date a reinspection of Seaport Restaurant was completed. All fire safety violations have been corrected. Please feel free to contact this office if you have any question.
s/ JAMES WATSON Fire Marshal, Cape Canaveral Fire Department

BANKRUPTCY COURT TRANSCRIPT

1. THE COURT: I Understand that. But I just
2. don't understand why he didn't just do it and went
3. through all this trouble for five years, and he may
4. be right, but some times you buy a lawsuit and you
5. forget the whole purpose of the problem to begin
6. with.
7. I'll give both side two. weeks and one for to you
8. provide me with the code, certified copy by
9. whoever certifies it, what it was on the the date of
10. termination. And then I'll give everybody two weeks
11. to brief the issue.
12. MR. SCOTT: Your Honor, if I can beg your
13. indulgence, I have a –
14. THE COURT: Tell me how much time you need
15. MR. SCOTT: I have the week from the 26th
16. through the ----
17. THE COURT: You tell me how much time you would
18. need.
19. MR. SCOTT: I would need at least that extra
20. week.
21. THE COURT: Three weeks enough time?
22. MR. SCOTT: It should be Your Honor.
23. THE COURT: All right. Three weeks.
24. MR. TURNER: Your Honor, if I could have a week
25. to two weeks after I get his brief so I know exactly

FILED
U.S. COURT OF APPEALS IN THE UNITED STATES
COURT OF APPEAL S ELEVENTH CIRCUIT

FOR THE ELEVENTH CIRCUIT, T. K. KAHN CLERK

No. 03-10189-DD IN RE: RAYMOND J. CASCELLA ,

Debtor.

Plaintiff-Appellant, versus CANAVERAL PORT AUTHORITY, Defendant-Appellee.

On Appeal from the United States District Court for the

Middle District of Florida

ON PETITION(S} FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC (Opinion, 11th Cir., 19, F.2d).

Before: TJOFLAT, BIRCH and WILSON, Circuit Judges. PER CURIAM: The Petition{s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Petition(s) for Rehearing En Banc are DENIED. ORD-42 (6/95) s/ Wilson,United States Circuit Judge

App. 9

UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA ORLANDO DIVISION

RAYMOND J. CASCELLA, Plaintiff,
Case No.: 6:01-cv-558-0rl-O6KRS

CANAVERALPORTAUTHORITY,Defendant

ORDER

THIS CAUSE comes before the Court on appeal from United States Bankruptcy Court.- Appellant Raymond J. Cascella ("Cascella") filed a brief (Doc. 20), to which Appellee Canaveral Port Authority ("CPA") has responded in opposition. (Doc. 42.) Cascella then filed a reply brief (Doc. 43), which CPA moved to strike. (Doc. 44.) Cascella also moved for costs in filing the transcripts necessary for his brief (Doc. 47), to which CPA responded in opposition. (Doc. 48.) Finally, Cascella filed a motion for injunctive relief, claiming irreparable harm from a state court eviction proceeding (Doc. 55), to which CPA again responded in opposition. (Doc. 56.) I. BACKGROUND A landlord-tenant dispute is the underlying cause of this case. Cascella was the assignee of a lease between the CPA and its tenant, the W.E. Yehnert Corporation. The leasehold property is comprised of a single building containing a restaurant and an apartment Cascella assumed the lease on January 25, 1991, and moved into the apartment on October 13, 1995. On October 30, 1995, CPA notified Cascella that he needed to install two firewalls in the building in order to comply with building codes. Cas cella' s lease mandated compliance with building codes. CPA repeatedly attempted to make Cascella install the firewalls, but Cascella refused. One year later, CPA notified Cascella and his then-attorney that it would termenate his lease if he did not install the firewalls by October 11, 1996 Cascella filed suit against CPA in state court ("the Firewall

by his lease. CPA counterclaimed for eviction. After Cascella filed a voluntary petition for Chapter 13 bankruptcy relief on April 6, 1999, CPA removed the Firewall Case to federal court along Case"), requesting declaratory judgment and alleging that CPA breached the covenant of quiet enjoyment guaranteed with two other adversarial proceedings. In doing so, CPA improperly identified the Firewall Case as one of the other adversarial proceedings, a suit dealing with Cascella's failure to pay *ad valorem* property taxes under the lease ("the Tax Case"). Despite this error, Cascella, with the assistance of counsel, litigated the Firewall Case in bankruptcy court as a possible recovery for Cascella' s bankruptcy estate. After a two-day trial, the bankruptcy court entered judgment for CPA in the Firewall Case on March 9, 2001, withholding judgment on CPA's counterclaim and attorneys fees. On April 9, 2001, the bankruptcy court awarded'cPA $70,000 in attorneys fees and $25,110 in costs. On May 7, 2001, the bankruptcy court denied CPA's counterclaim, and Cascella filed his appeal with this Court. On November 9,2001, the bankruptcy court dismissed Cascella"s petition for relief under Chapter 13 because Cascella failed to make ordered monthly payments in compliance with his Chapter 13 plan. 'The bankruptcy court converted Cascella',s case to a Chapter 7 proceeding on November 29, 200] and appointed Gene T - Chanlbers as Trustee. Chambers subsequently abandoned the appeal. (Doc. 40.)

Cascella argues that CPA improperly removed the Firewall Case to bankruptcy court by mistakenly referring to it as the Tax Case on the certifica1e of rernoval. Furthermore, Cascella claims that even if removal was proper, the bankruptcy court lacked .Jurisdiction over his case because: 1) it should have been tried in state court as a personal injury tort; and 2) a state court had already dismissed a CPA jnitiated cause of action for Cascella eviction for lack of

prosecution. Finally, Cascella maintains in his motion for injunctive relief that a state court which ordered his eviction on February. 18,2002 lacked jurisdiction to do so, . II. DISCUSSION Standard of Review The Court reviews findings of fact under a clearly erroneous standard.. while conclusions of Jaw are reviewed *de novo.* In re Chene, 236 B.R. 69, 71 (M.D. Fla. 1999); Fed. R. Bankr. P. 8013. The Court reviews equitable detemlinatjons made by the bankruptcy court for abuse of discretion. In re Red t~a~t l:orn-m F.2d 883~ 890 (11th Cir. 1.990); ~ Sawldcrs. 240 B.R. 636.. 639 (S.D. Fla. 19<)9). No findings of fact are at issue in the instant case..

B. Removal of the Firewall Case

Cascella's allegations that the removal of the Firewall Case was improper or deprived the bankruptcy court of jurisdiction are misplaced. Bankruptcy courts "have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b) (emphasis added). The statute governing removal of bankruptcy court claims allows removal of any claim if the bankruptcy court has jurisdiction under 28 U.S.C. § 1334. 28 U.S.C. § 1452. The Firewall Case is, at minimum, related to Cascella' s bankruptcy proceeding. The claims in the Firewall case are related to Cascella's bankruptcy case because "it is conceivable that the outcome of this proceeding may have an effect on the debtor's estate." In re Olympia Holding Com., 215 B.R. 254, 256 (Bankr. M.D. Fla. 1997). Undoubtedly, Cascella's lawsuit against CPA for breach of contract and declaratory judgment could have a conceivable effect on his bankruptcy estate. For these reasons, removal was proper Cascella also contends that the improper identification of the Firewall Case as the Tax Case on the certificate of removal divested the bankruptcy court of jurisdiction Cascella does not cite, nor is the Court aware of, any case law holding that the mislabeling of a certificate of

removal constitutes reversible error. The record reflects that Cascella, with the assistance of counsel, had a two-day hearing on the Firewall Case. The Court is satisfied that both the bankruptcy court and the parties harbored no illusion they were resolving anything other than the instant case, despite what appeared on the certificate of removal. As such, the Court concludes that the error in the removal certificate was harmless and did not affect the bankruptcy court's jurisdiction. C. Cascella's Remaining Jurisdictional Arguments Cascella also maintains that the bankruptcy court was without jurisdiction to entertain his cause of action, which he argues should have been addressed in state court as a personal injury tort. Moreover, he contends that a state court had already dismissed a CPA-initiated eviction proceeding, and this dismissal rendered bankruptcy court jurisdiction improper. The Court finds both arguments without merit. Cascella's argument that his case should have been addressed as a state court personal injury tort is groundless. Cascella, again with the assistance of counsel, clearly and unequivocally declared that his cause of action lay in contract. (Doc. 42, Exhibit 1 at 18-22.) Indeed, the very nature of a landlord-tenant disagreement over a lease provision has its roots in- contract law. CPA correctly notes that allowing Cascella to change his cause of action so dramatically at the appellate level would be legally and equitably improper. See new Hamshire v. Maine, 532 *U.S.* 742, 749 (2001) (citing 18 Moore's Federal Practice 134.30, p. 134-62 (3d ed. 2000) ("the doctrine of judicial estoppel prevents a party from asserting a claim in a legal proceeding that is inconsistent with a claim taken by that party in a previous proceeding."). Cascella's contention that a previous state court dismissal divested the bankruptcy court of jurisdiction is similarly misplaced. A state court dismissed a CPA-initiated eviction proceeding *for* failure to prosecute in 1998. At this time, CPA had already raised similar eviction proceedings as a plaintiff in the Tax Case and as a defendant

in the instant case. Despite Cascella' s contrary assertions, the state court dismissal in no way prejudices CPA's current cause of action. For the foregoing reasons, the bankruptcy court's jurisdiction was- proper. D. Motion for Injunctive Relief Finally, Cascella has filed a motion for injunctive relief, claiming irreparable harm from a state court eviction proceeding. This motion suffers from numerous procedural and substantive deficiencies. The procedural defects include, but are not limited to failure to submit a verified complaint or accompanying affidavits that support his motion with allegations of specific fact and failure to submit a proposed order prepared in strict accordance with the Local Rules and Federal Rule of Civil Procedure 65. Substantively, the motion improperly demands that the Court address a separate proceeding encompassing the final decision of two state courts. When Cascella moved to change his bankruptcy designation from Chapter 13 to Chapter 7, CPA filed a motion for relief of stay in bankruptcy court, requesting leave to proceed with Cascella' s eviction proceedings in state court. (Doc. 56, Exhibit 1.) The bankruptcy court granted this motion on January 11, 2002. On February *18,2002,* the state circuit court held that Cascella's eviction was proper because he failed to pay the portion of his rent consisting of ad valorem property taxes. On September 6, 2002, the Fifth District Court of Appeals affirmed the decision. That court also denied Cascella's motions for rehearing and r ehearing en banc Cascella was subsequently evicted. These eviction proceedings are outside the scope of the Firewall Case presently before the Court Addressing the final eviction decision of controlling state courts would constitute an improper collateral attack. As such, Cascella' s motion for injunctive relief is without merit. **III. CONCLUSION For the foregoing reasons, the judgment of the United States Bankruptcy Court is** —~- **AFFIRMED.** CPA's motion to strike (Doc. 44), is **DENIED AS MOOT.** Cascella's motion for costs (Doc. 47), is **DENIED.** Cascella's motion for injunctive relief (Doc. 55), is **DENIED.** The Clerk of the Court is **DIRECTED TO**

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA ORLANDO
DIVISION In re Adv. No.: 99-0107
RAYMOND J. CASCELLA, Case No.: 99-02900-6B3

Debtor.
RAYMOND J. CASCELLA, :

Plaintiff,. V.

CANAVERAL PORT AUTHORITY Defendant.

MEMORANDUM OPINION .;

. At Orlando, in said District on September 18 and 19,2000, before Arthur B. Briskman, Bankruptcy Judge. This matter came on for a final evidentiary hearing on the adversary complaint filed by Plaintiff. Raymond J. Cascella against the Defendant. Canaveral Port Authority. After reviewing the pleadings and evidence, and hearing live testimony and arguments of counsel the Court makes the following Findings of Fact and Conclusion of Law. FINDINGS OF FACT ; Plaintiff, Raymond J. Cascella ("Cascella") filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code on April 6, 1999 (a "Petition Date"). Defendant, Canaveral Port Authority ("Canaveral"), is an independent special district created by the legislature of the State of Florida, and owns a parcel of land located at 680 George King Boulevard, Cape Canaveral, Florida ("the Real Property" or "the Leasehold Premises "). Prior to the Petition Date, on April I, 1987, Canaveral leased the Real Property to W.E. Yehnert Corporation by virtue of a Lease Agreement. On January 25, 1991, W.E. Yehnert Corporation assigned the Lease Agreement to Cascella (hereinafter "the Seaport Lease"). Manos, Inc. ("Manos") is a subchapter S corporation wholly-owned by Cascella. Manos manages the Seaport Restaurant and subleases a portion of the Leasehold Premises

to Natural Bait & Tackle. The remainder of the Leasehold Premises are used by Manos to conduct business as Seaport Restaurant and Lighthouse Lounge. ' As of October 13. 1995, Cascella has been residing on the second floor of the Seaport Restaurant. On October 3D, 1995. Canaveral notified Cascella that the Leasehold Premjses are lacking two-hour fire rated separations. The first fire wall is needed on the first floor between the portion of the building used by Manos as the Seaport Restaurant and Lighthouse Lounge, and that portion of the first floor used by Natural Bait and Tackle. The second fire wall is needed to divide that portion of the second floor, used by Cascella as his residence. from the remainder of the building. Despite numerous attempts by Canaveral to have Cascella install the required two- hour firewalls, Cascella never installed the firewalls. Canaveral gave Cascella the opportunity to come forward with his own experts to dispute the conclusions of Canaveral that Cascella needed two hour fire walls. Cascella never cured this default by installing firewalls, and never offered any authoritative source to contest Canaveral's conclusion that firewalls were needed. On September 11, 1996, after notice was give to Cascella and his counsel, Allen Scott, the District Board of Commissioners of Canaveral convened and recommended to terminate Cascella's lease if, by October 11, 1996, Cascella did not install the fire walls. On or about October 11, 1996 -- before Canaveral had terminated Cascella's lease -- Cascella filed a lawsuit against Canaveral in the Eighteenth Judicial Circuit, Brevard County, *t* Florida. This lawsuit was subsequently removed to this Court by Canaveral on May 5, 1999 Cascella sought damages against Canaveral in excess of $15,000.00 as a result of an alleged breach of paragraph 21 of the lease, which deals with the covenant of quiet enjoinment.' Canaveral filed a counterclaim against Cascella requesting that Cascella be evicted from the leasehold premises due to his failure to install the required firewalls. The applicable building codes that Cascella has violated are

set forth in the affidavits of Jon Brazee and Jerry Simon filed on September 27, 2000. Compliance with the building codes are required pursuant to the terms of the Seaport Lease. Canaveral claims Cascella had violated and is in default of the Seaport Lease--paragraphs 4, 12, 14, 18, and 24: Cascella I lne express provision in the lease containing the covenant of quiet, enjoyment, paragraph provides that lessor "covenants that lessee, upon paying rent and abiding by the covenants, terms, conditions . and stipulations undertaken on its parts shall peaceably hold and enjoy the remainder of the leased premises during the lease term, without interruption by the lessor or any person claiming by. through or under the lessor also alleged, through these proceedings, that his due process rights had been violated as a result of the termination of the Leasehold Premises by Canaveral Cascella filed a motion seeking to assume the Leasehold Premises in the Chapter 13 bankruptcy case pursuant to 11 *U*.S.C. § 365. Canaveral objected to this motion on various grounds, including that assumption was not proper based on the existing defaults under the Leasehold Premises and that the Seaport Lease was terminated prior to bankruptcy. Fire separations with the minimum two-hour fire rating are. required to be installed in the Leasehold Premises on the first floor, between that portion of the Leasehold Premises used by the Natural Bait and Tackle shop and the remainder first floor used by Manos for the Seaport Restaurant. Fire separations with a minimum two-hour fire rating are also required between the first and second floor. Based on the present configuration of the Leasehold Premises, these fire rated separations are required, but do not exist. So long as Cascella ; resides on the Leasehold Premises and/or subleases a portion of the first floor of the Leasehold Premises, there exists a serious. yet unrectjfied, fire-safety hazard due to the lack of proper fire rated separations. Canaveral provided Cascella adequate notice he was required to install the two-hour fire rated walls

and adequate notice that, if he failed to install the fire walls, his lease would be I terminated. Rather than installing the required firewalls, Cascella elected to file suit, seekjng the declaration that firewalls are not required Canaveral provided Cascella due process in the termination of the Sea Port Lease and did not violate Cascella's quiet enjoyment of the premises.

2 These lease provisions are as follow4. The Lessce shall maintain the leased premises in a clean, safe and sanitary condition. 1

12. [LJessee agrees not to permit to be carried *on,* upon, in or about said leased premises a public! or private nuisance, or any activity which may tend to cause, by increasing the hazard of ri:lk. the increase of

Iinsurance premium rates of any kind upon said premises.

14. [LJessee agrees to comply with all applicable rules and regulations of the Lessor and other;

authorized governmental agencies affecting the leased property , 18. [L]essee shall permit the lessor and its agents to enter the leased premises any day during;

reasonable hours for the purposes of inspections. 24. [LJessee shall comply with allla\vs. ordinances, rules, and regulations of all Federal. State, county and municipal governments now in force or that may be enacted hereafter applicable to lessee's use and

CONCLUSIONS OF LAW

Every provision in a lease agreement must be given full meaning and effect and the intentions of the parties in entering a lease agreement should be determined from the unambiguous terms of the agreement itself. Stinson. Lyons. Gerlin & Bustamante v. Brickell i

Bldg. 1 Holding Co., 923 F.2d 810, 813 (11th Cir.1991). Moreover, a lease represents the deliberate distribution of risks and benefits by the parties. lQ. at 813. Cascella asserts that Canaveral has breached paragraph 21 of the Seaport

Lease pertaining to the covenant of quiet enjoyment by (i) demanding installation of the fire walls on the first and second floor; (ii) inspecting the Leasehold Premises; (iii) calculating and organizing a "raid" of Cascella's premises on September 10, 1996; and (iv) terminating the: Seaport Lease after notice and hearing on September 11, 1996. There is no merit to any of Cascella's claims that Canaveral breached Cascella's quiet enjoyment. The evidence in this case demonstrates that Canaveral was exercising only the rights it had reserved under the Seaport Lease and that Canaveral's actions were reasonable and responsible as a landlord. Canaveral gave Cascella almost one year to fix the fire wall separations on the first and second floor of the Leasehold Premises. Nevertheless, Cascella occupancy of the leased premises did not comply with the requirements to build the proper fire wall separations. Based on these defaults, Canaveral's actions seeking to terminate the Seaport Lease were justified and allowed pursuant to the terms of said Lease. The Seaport Lease was validly terminated by Canaveral prior to the Petition Date.

Cascella's claim that he has not been afforded due process prior to termination is also without merit. Cascella claims he had the right to file suit to challenge Canaveral's actions prior to termination is paragraph 24. Paragraph 24 states that a "lessee shall have the right, however, to contest any such law, ordinance, rule, or regulation by appropriate legal action The plain meaning of paragraph 24 does not allow Cascella the right to suspend termination of the Lease through the filing of a lawsuit against Canaveral. Due process is required by administrative agencies acting in a quasi-judicial capacity. Hadle~ v. Degartment or Admin., 411 So.2d 184 (Fla.1982); Jennings v. Dade Count~, 589 So.2d 1337 (Fla. 3d DCA 1991), ~. ~., 598 So.2d 75 (Fla. 1992). While the concept of due process applies in an administrative

proceeding, those requirements are less stringent than I in a judicial proceeding. Hadley, 411 So.2d at 187. t Canaveral complied with all due process concerns. After Cascella failed to correct the building code violations under the Seaport Lease, Canaveral placed it on the agenda for termination.before the Conunissioners. Cascella was duly notified of a hearing to take place on September II, 1996 regarding the termination of the Seaport Lease. After taking testimony and arguments from both sides, theCommissioners unanimously voted to tenninale Cascella's Lease if he did not correct the fire walls by October 11, 1996. Cascella was afforded due process prior to termination of the Seaport Lease. Cascella is required to construct the required fire walls with the minimum two-hour fire rating in the Leasehold Premises on the first floor between that portion of the Leasehold Premises subleased to the National Bait and Tackle shop and the remainder first floor used by ~, Manos for the Seaport Restaurant; and on the second floor. between that portion of the second floor used by Cascella as a residence. and the remainder of the building. Based on the foregoing rea sons, the relief sought by Cascella against Canaveral for damages on breach of the quiet enjoyment is due to be denied. The Court reserves ruling on the counterclaim filed by Canaveral until the hearing scheduled for March 14,2001, at 3:00 p.m.. 135 West Central Boulevard, Courtroom A, Fifth Floor, Orlando, Florida.

Dated at Orlando, Florida, this 9th day of March,2001.

ARTHUR B Briskman s/

United States Bankruptcy Judge Copies furnished to: David R. McFarlin, Esquire, Attorney for Plaintiff, 1851 West Colonial Drive, Orlando. Florida 32804 W. Glenn Jensen, Esquire, Attorney for Defendant, Post Office Box 231, Orlando, Florida 32802-0231 , Jules S. Cohen, Esquire, Attorney for Defendant, Post Office Box 231, Orlando, Florida 32802-0231 Susan Coberly, Judge Briskman's Courtroom Administrator

UNITED STATES BANKRUPTCY COURT

MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

CASE NO: 99-02900-6b3

In re: RAYMOND J. CASCELLA. Debtor.
RAYMOND J. CASCELLA,
Plaintiff Adv. No. 99-0107

vs. CANAVERAL PORT AUTHORITY, Defendant,

PLAINTIFF'S POST TRIAL BRIEF

This action carne on for final evidentiary hearing before the Court on September 18 and 19, 2000. Pursuant to prior order of the Court, trial was limited to Count II of Plaintiff's Complaint.

Count 11 of the Complaint in this case is an action for damages filed by Raymond J. Cascella against the Canaveral Port Authority for breach of contract. The contract in issue is a thirty (30) year lease of real property in Port Canaveral, Florida, running by its terms from April 1, 1987, through March 31. 2017 (P.Ex.1). By Assignment of Lease effective January 17, 1991, the Plaintiff in this action. Raymond J. Cascella ("Cascella ") became the lessee under said lease (P. Ex.l). [1 The symbol P.Ex. followed by a number references specific numbered Plaintiff's Trial Exhibits.

It is undisputed that the Canaveral Port Authority ("CPA") drafted the Lease Contract. According to Cascella's Closing Statement, he purchased his Port Canaveral leasehold interest "with improvements~ store, restaurant and bar furniture, furnishing, fixtures and equipment and inventory of Gift and Shell Shop, all in Sea Gems and Mr. Bill's Portside Saloon" for $225,000.00 (See P. Ex. 27). It is undisputed that the Lessor, Canaveral Port Authority, approved assignment of the lease to Cascella on January 16, 1991, and that the Canaveral Port

Authority terminated Cascella' s lease on October 11, 1996 (P. Ex. 17,18,20).

Cascella contends that the termination of his lease and the various interferences with his quiet enjoyment of his leasehold interest constitute breaches of the lease contract by reason of which he has suffered substantial damages.

The Canaveral Port Authority contends on its part that it was legally entitled to terminate Cascella' s lease because of Cascella' s alleged violation of paragraph 24. of the Lease Covenants and Conditions which provides as follows:

"24. COMPLIANCE WITH LAWS: Lessee shall comply with all laws, ordinances, rules, and regulations of all Federal, state, county and municipal governments now in force or that may be enacted hereafter applicable to Lessee's use and occupancy of the leased premises. Lessee shall have the right, however, to contest any such law, ordinance, rule, or regulation by appropriate legal action provided that such contest is conducted without cost, expense, or prejudice to Lessor."

The CPA asserts, in simplest terms, that Cascella violated applicable law by failure to install upon demand of the CPA certain improvements to the leasehold premises. Cascella asserts under the same lease provision that he had the right to contest, and was in fact contesting the alleged violation when the CPA nonetheless wrongfully terminated and thereby breached his lease.

The initial crucial question, therefore, is what **was** the alleged violation of law upon which the CPA relied to justify termination and repudiation of Cascella's lease? **THE PURPORTED FIRE CODE VIOLATION** __Immediately after terminating Cascella's lease, on October 15, 1996, the CPA filed suit to evict Cascella from the leasehold (ignoring Cascella's already pending suit for declaratory relief). The basis alleged for eviction by the CPA was Cascella' s alleged failure to comply with the Fire Safety Standards as set forth in Section 633.022 et seq., Florida Statutes (P.Ex. 16).2

Having terminated Cascella' s lease and filed suit for eviction the CPA realized that it had failed to give Cascella the proper written notice to

PUBLISHER'S NOTE:

Page(s) App 22 missing in original.

It should be emphasized at this juncture that the Canaveral Port Authority is a political subdivision of the State of Florida established by special act of the Florida Legislature to establish and administer the Port Canaveral deep water port facility. As a political subdivision and agency of the State of Florida, the CPA is constitutionally prohibited from imposing any penalties except as provided by law Fla. Const. Article 2, Section 18. The CPA possesses no inherent power to impose sanctions, and any such power must be expressly delegated by statute. See, e.g., State Dept. Of Environmental Regulation v. Puckett Oil Co.Inc., [577 So. 2d 988 (Fla. 1st DCA 1991).]

In the instant case, the CPA did in fact impose a sanction upon Cascella--forfeiture of his leasehold--based upon the conclusion of the CPA that Cascella had violated the law. Notably, Cascella had not been formally charged, tried or convicted of any such violation when his Port Canaveral leasehold was terminated by the CPA, and he still has not.

As for the statute specifically cited by the CPA as justification for termination of Cascella's lease, Florida Statutes, Section 633.022 et seq., does provide generally that the Florida Department of Insurance shall adopt uniform fire safety
standards that apply, adopt other things, to new and existing public food service establishments. Florida Statutes Section 633.022(1)(b). Further, Florida Statutes Section 633.025 specifies that each municipality, county and special district with fire safety responsibilities shall adopt and enforce one of the prescribed minimum fire safety codes.

The CPA has never specified what fire safety code it adopted, if any, and when the same was adopted. Nor has it identified what purported provision(s) of that code Cascella has allegedly violated.

Moreover, the CPA has consistently ignored that even under the statute cited to substantiate termination of his lease, Cascella had a right to appeal any decision of the fire official. Florida Statute§ Section 633.025(8) provides:

(8) With regard to existing buildings, the Legislature recognizes that it is not always practical to applv anv or all of the provisions of the minimum fire safety code and that physical limitations may require disproportionate effort or expense with little increase in lifesafety". Prior to applying the minimum firesafety code to all existing building, the local fire official shall detemine that a threat to lifesafety or property exists. If a threat to lifesafety or property exists, the fire official shall apply the applicable firesafety code for existing buildings to the extent practical to assure a reasonable degree *of* lifesafety and safety of property or that: fire official shall fashion a reasonable alternative which affords an equivalent degree of lifesafety and safety of property. The decision of the local fire official may be appealed to the local administrative board described in s. 553.73. " 3(emphasis added)

Unfortunately, in the instant case the Canaveral Port Authority had neither established nor designated an administrative board for disposition of code dispute appeals (fire code, building code or otherwise). That failing of the CPA left Cascella with but one remedy to contest the alleged fire code violation. That remedy was to file a suit for declaratory judgment pursuant to the provisions of Chapter 86, Florida Statutes. (Count I *of* the Complaint in this case.)
[1 Canaveral Port Authority has never designated or established the required administrative board to hear appeals of decisions or fire officials.]

Although the CPA initially convinced the Circuit Court to dismiss Cascella's declaratory ,judgment action, that dismissal was reversed by the Fifth District Court of Appeal of Florida. By virtue of the decision of the Court of Appeal, the declaratory judgment action filed by Cascella was as a matter of law established as a proper remedy for Cascella to contest the alleged fire code/building code violations. Cascella v. Canaveral Port Authority 706 So.2d 137 (Fla, 5th DCA 1998).

It is pertinent to emphasize at this juncture that the Canaveral Port

Authority knew when it terminated Cascella's lease on October 11, 1996, that Cascella was exercising his right under paragraph 24 of the Lease Covenants, and Conditions to contest the alleged violation asserted by the CPA. In his Memo for Record dated 8-27-96, Mr. Bancroft of the Port Authority memorialized a telephone conversation with Cascella' s attorney acknowledging that "Mr. Cascella is going to invoke Article 24 of his Lease Covenants and ask a court of law if he is disobeying any rules" (P. Ex. 8) Mr. Bancroft received formal written notice to that effect from Cascella' s counsel on August 29, 1996 (P. Ex. 9) and a copy of Cascella's complaint seeking declaratory relief on October 10, 1996 (P. Ex. 13), The Canaveral Port Authority nonetheless terminated Cascella's lease on October 11, 1996, ignoring his contractual and legal right to contest the alleged firesafety code violation.

Section 633.081, Florida Statutes mandates that each county, municipality and special district that has fire safety enforcement responsibilities employ or contract with a licensed fire safety inspector to perform all fire safety inspections required by law. Florida Statutes 633.081(1). The same statute specifies the requirements for licensing a fire safety inspector. Florida Statute 633.081(2)

Notably, although licensed fire safety inspectors are empowered to issue citations for the alleged violation of fire safety codes,4 the mandatory legal requirements for the issuance of such citations are stringent. Florida Statutes 633.052(b). Among other things, the issuance of a citation for an alleged violation by a fire safety inspector requires a written explanation to the person charged of the procedure available to contest the citation. Florida Statutes 633.052(b)(7).

[4 Nothing in this statute empowers licensed fire safety inspectors to act as building code inspectors. Building code inspectors are required to be licensed and qualified pursuant to the provisions of Chapter 468. Florida Statutes.]

alleged violation by a fire safety inspector requires a written explanation to the person charged of the procedure available to contest the citation. Florida Statutes 633.052(b)(7)

In the instant case, the original CPA fire safety inspector, Jerry Simon, never issued Cascella a citation for any alleged fire safety code violation. Six months before Cascella' s lease was terminated, on April 22, 1996, the Cape Canaveral Volunteer Fire Department, Inc. ("CCVFD"), became the official Fire Safety Inspector for the Canaveral Port Authority (P. Ex. 21).

The CCVFD likewise never issued a citation to Cascella prior to termination of his lease by the Canaveral Port Authority. The CCVFD did, however, refer the alleged fire code violation to the Florida Division of Hotels and Restaurants for prosecution (P. Ex. 22). On October Il, 1996, the same day that the CPA terminated Cascella's lease, Dave Sargeant, Fire Chief for the CCVFD and Fire Inspector for the CPA, requested the Florida Department of Professional Regulation, Division of Hotels & Restaurants ("DBPR") to proceed on the alleged violation, and the DBPR did in fact file formal charges against Cascella for alleged failure by Cascella "to comply with the local fire authority on providing or repairing firewalls in the establishment as cited by Fire Marshal, Dave Sargeant, Cape Canaveral" (P. Ex. 23)

As he was entitled to do pursuant to the provisions of Section 120.57(1), Florida Statutes (the Florida Administrative Procedures Act), Cascella filed an appeal of the alleged fire code/fire wall violation (P. Ex.23). The case was thereafter referred to the Florida Division of Administrative hearings and was ultimately fully and finally settled and the file closed b)' order of the presiding Administrative Law Judge (P. Ex. 23).

Cascella believes and respectfully Submits that the alleged fire code/fire wall charges formally initiated against him by the CPA are now finalized and barred by the doctrine of res judicata. In Florida, the Courts have established that *res judicata* applies to an agency determination made pursuant to the agency's quasi-judicial decision-making authority. Florida Export Tobacco Co. v. Dept. of Revenue, 510 So.2d 936 (Fla. 1st DCA 1987), rev. den. 519 So. 2d 986; Hasam Realtv Corp. v. Dade Countv, 486 So.2d 9 (Fla. 3rd DCA 19186), rev. dism. 492 So. 2d 1332. Simply stated:

"If the requirements of res judicata are satisfied, then neither agencies nor courts may subsequently re-litigate issues already

resolved by a court or another agency." Burros. Administrative Law, 1987 Survey Of Florida Law, 12 Nova L. Rev. 299, 352 (1988) (quoting Neidhart v. Pioneer Federal Savings & Loan Assoc. 498 So. 2d 594, 596 (Fla. 2d DCA 1986).

It should also be emphasized that the official Firesafery Inspector for the CPA reinspected Cascella' s leasehold on April 16, 1998, and determined that all fire safety violations have been corrected (P.Ex. 24, 25). There are Currently no citations, charges, or proceedings whatsoever pending against Cascella for any alleged fire code violations.

THE BUILDING CODE CONFUSION

The Canaveral Port Authority has since the beginning *of* this dispute confused the term "fire code violation" with the term "building code violation." In the State of Florida, the statutory basis for the implementation and enforcement of fire safety standards is Chapter 633, Florida Statutes. This statute establishes the licensing requirements for fire safety inspectors, and requires the establishment of minimum fire safety standards. It also establishes the means and procedures for enforcement of fire safety standards. The only specific legal basis ever stated by the CPA for terminating Cascella's lease was Cascella' s alleged violation of fire safety standards purportedly established by Chapter 633, Florida Statutes. This is the legal basis for eviction alleged in the original CPA eviction Complaint (P. Ex.16) which was later dismissed for failure to prosecute, and this is the legal basis stated in the required CPA notice to cure delivered to Cascella over three months after his lease was terminated (P.Ex. 19).

What the CPA has either confused or completely overlooked is that building code requirements are established in the State of Florida by a completely different set of statutory criteria. The qualification and licensing requirements for building code inspectors is established by Chapter 468, Florida Statutes. The requirement for implementation of minimum building standards and the establishment of means and procedures for enforcement of.

CONCLUSION

On the basis of the foregoing and the evidence presented at trial, Cascella respectfully submits that the Canaveral Port Authority breached his lease, and that he is accordingly entitled to the recovery of his damages thereby incurred.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by United States Mail this 4th day of November, 2000, to W. Glenn Jensen, Esquire, 255 South Orange Avenue, P.O. Box 231, Orlando, Florida 32802.

SCOTT & SHEPPARD, P.A.

By: -Allen C. D. Scott, II

101 Orange Street, St. Augustine, FL 32084
(904)825-0995 Florida Bar No. 134632

AGO 86-81-September 22,1986

MUNICIPALITIES

STATE OF FLORIDA ATTORNEY GENERAL'S ANNUAL REPORT

CONFLICT BETWEEN LIFE SAFETY CODE STANDARD BUILDING CODE

To: Margaret M. Gentle, Mayor, City of North Port

Prepared by: John Rosener, Assistant Attorney General

QUESTION:

In the event of a conflict does the Life Safety

Code as adopted by the State Fire Marshal take precedence over the Standard Building Code?

SUMMARY:

Unless judicially or legislatively determined otherwise, the fire safety standards as set forth in the State Minimum Building Codes adopted pursuant to s. 553.73, F.S., as amended by s. 33, ch.86-191, Laws of Florida, may not be superseded or supplemented except as enumerated in s. 553.73(3), F.S., and s. 633.05(8),F.S. However, since the Standard Building Code expressly and explicitly excludes

those provisions pertaining to fire prevention from adoption by a municipality pursuant to s. 553.73(2) (a). Accordingly, in such municipalities which have adopted the Standard Building Code, the rules of the State Fire Marshal including the Life Safety Code would apply as minimum fire safety standards to all occupancies except those which the legislature has designated as subject to uniform fire safety standards. To the extent that a municipality, which has adopted the Standard Building Code, may have enacted its police power more

stringent standards pertaining to fire protection than those contained in the Life Safety Code with regard to those buildings, structures and other entities not designated by Legislature as subject to uniform safety standards, the more stringent standards should prevail.

In AGO 86-60, I concluded that although a municipality is not required to adopt the Life Safety Code, to the extent that such code has been adopted by the State Fire Marshal pursuant to his rulemaking authority, such code has the force and effect of an ordinance of such a municipality. It was further noted that the Life Safety Code and the Standard Building Code operate in two fields. i.e., fire safety and building safety; however, in the event a municipality may

have enacted under police power a more stringent provision than provided in either code, the more stringent standard should prevail. The foregoing conclusion was based upon the interrelation of ch. 633,F .S., governing fire prevention and control generally, and part Vl of ch. 553,F.S., especially s. 553.73, F.S. establishing the State Minimum Building Codes.

It has come to the attention of this office that the 1986 Legislature amended s. 553.73, F. S, in the Florida Growth Management Act, CS for CS for SB 978, designated as ch. 86-191, Laws of Florida. Moreover, The State Fire Marshal has amended' the Florida Administrative Code to adopt the 1985 edition of the Life Safety Code as a part of the minimum and uniform fire safety standards of this state. See Rule 4A-3.012, F.A.C., and Rule 4A-28. 015, F.A.C. In light of the foregoing, it becomes necessary to reconsider the first question raised in AGO 86-60. To the extent of any conflict there-with, this opinion should be considered as rnodifying and superseding that opinion.

Section 33 ch. 86-191, Laws of Florida, amending s. 553.73, F .S. deletes the National Building Code, 1976 edition, from the list of State Minimum Building Codes from which each local government and state agency with building construction regulation responsibilities must adopt one as its building code. In addition, s, 553.73(2)(a), F.S, in listing the Standard Building Code as one of the State Minimum Building Codes, now refers to the "Standard Building Codes, 1985 edition, with 1986 accumulated revisions, pertaining to building, plumbing, mechanical, and gas, and excluding fire prevention" (Emphasis supplied.) I have determined that ss. 101.3(a),101.3(b) and 103.6, Standard Building Code, 1985 edition and are substantially identical.Subsection(8) of s.553. 73, created by s. 33, ch 86-191, supra, provides that "the fire safety standards as enumerated in the state Minimum Building Codes adopted pursuant to this section shall not be superseded or supplemented except as enumerated in subsection (3) and s. 633.05(8)" (Emphasis supplied.) Pursuant to s.553.73(3) after January 1,1978, local govern- ments and state agencies with building construction regulation responsibilities are authorized to mandate more stringent requirements than those set forth in the state Minimum Building Codes, provided that:

(a) There is a determination by the local governing body of a need to strengthen the requirements of the state Minimum Building Codes adopted by such governing body, based upon demonstrations by the local governing body that local conditions justify more stringent requirements than those specified therein, for the protection of life and property; and

(b) Such additional requirements are not discriminatory against materials, products, or construction techniques of demonstrated capabilities. (Emphasis supplied.) See also s. 553.79(4).F.S., providing that after the effective date of the adoption of the State Minimum Building Codes pursuant to part VI of ch. 553, F . S., local governments may modify their

respective codes to require more stringent standards than those specified in the State Minimum Building Codes, on the condition that the provisions of s. 553.73(3),supra are met.

As noted, supra, the state Fire Marshal has adopted the Life Safety Code as a part of the minimum and uniform fire safety standards of this state. The provisions of the Life Safety Code, 1981 edition, specifically referenced to and discussed in AGO 86-60, are unchanged in the Life Safety Code, 1985 edition. As discussed in AGO 86-60, s. 633.05(8) F.S., as amended by s. 2, ch. 86-87, Laws of Florida, effective October 1,1986, authorizes the State Fire Marshal to establish, revise and republish uniform fire safety standards for state-owned and state- leased buildings, all hospitals, nursing homes, adult congregate living facilities, correctional facilities, public schools, public lodging establishments, public- food-service establishments, elevators, migrant labor camps, mobile home parks, recreational vehicle parks, residential and non-residential child care facilities, and self-service gasoline stations. The terms "uniform fire safety standard" or "uniform fire prevention code" are defined in Rule 4A-3.009(16),F.A.C., to mean that the requirements in the standard or code as adopted by the State Fire Marshal shall be the uniform requirements for those occupancies required by the Legislature to meet uniform fire safety standards. Local jurisdictions are preempted from and shall not impose any more stringent requirements and shall not permit or enact or allow any occupancy to meet any requirement less stringent than that imposed by the State Fire Marshal's uniform standard or code.

In addition, the State Fire Marshal has adopted minimum fire safety standards for all occupancies which are not required to meet the uniform fire safety standards. Pursuant to Rule 4A-

3.009(4), F.A.C., the terms "Minimum Fire- safety Standard" or "Minimum Fire Prevention Code" are de- fined to mean: That the requirements in the standard or code as adopted by the State Fire Marshal shall be the minimum requirements for the state and that all occupancies covered by that standard or code must meet at least those requirements. Local jurisdiction are free to impose more stringent requirements but shall not permit or enact or otherwise allow any occupancy to meet any requirements less stringent than that imposed by the State Fire Marshal's minimum standard or code. All occupancies which are not required by the Legislature to meet uniform fire safety standards shall meet the minimum fire safety standards adopted by the State Fire Marshal. (Emphasis supplied.)

See Rule 4A-3.009(6), F.A.C., defining the term "occu- pancy" to mean "the purpose for which a building or portion thereof is used or intended to be used. " See also Rule 4A-3. 002, F.A.C., stating that "the Rules of the State Fire Marshal, with referenced and adopted standards therein, are applicable as Minimum Fire Safety Standards to all occupancies, except for those which the Legislature has designated as subject to uniform fire safety standards." As statutory authority therefore, the foregoing rules refer to ss. 633.05 and 633.051, F.S. See, e.g., s. 633.05(1), F. S., granting to the State Fire Marshal the authority to promulgate rules and regulations for the prevention of fires and s. 633.051(1), F.S. directing that the regulations authorized in s. 633.05, F .S. shall be such as are "reasonably necessary for the protection of the health, welfare and safety of the public.."

A question has been raised regarding the authority of the State Fire Marshal to adopt the Minimum Fire Safety Standards. However, rules of the State Fire Marshal are presumtively

valid and this office has no authority to declare otherwise; rather, this office must presume the validity of such rules until a court of competent jurisdiction declares otherwise. See AGO's 85-81,82-4, 79-46 and 76-185. Cf. Department of Professional Regulation, Board of Medical Examiners v Durrani, 455, So. 2d 515 (1 DCA Fla. , 1 984). Florida Citrus Commission v. Golden Gift, 91 So.2d 657 (Fla. 1956). See generally 1 Fla. Jur. 2d. Administartive Law s. 57; 73 C.J. S.. Public Administrative Law and Procedure s. 93. Section 33, Ch. 86-191, Laws of Florida, inter alia, updates the State Minimum Building Codes to include the 1985 edition of the Standard Building Code with 1986 accumulated revisions, "pertaining to build- ing, plumbing, mechanical, and gas, and excluding fire prevention" (Emphasis supplied.) thus continuing to exclude those provisions of the Standard Building Code relating to fire prevention from adoption by local governments and state agencies with building construction regulation responsibili-ties when complying with the provisions of s. 553.73(2), F.S. While I am aware that the new subsection(8) of s. 553. 73,F.

S., directs that the " fire safety standards " as provided in the State Minimum Building Codes shall not be superseded or supplemented except as enumerated in ss. 553 .73(3) and 663.05(8), F.S. (emphasis supplied.), the Standard Building Code, 1985 edition, itself makes no distinction between the terms "fire prevention" and "fire safety". Nor can I discern a legislative intent that such terms be construed other than synonymously for purposes of s. 553.73. See s. 553.73(6) stating that a municipality, county or state agency may divide the State Minimum Building Codes into segments identified as building, mechanical, electrical, plumbing, or fire prevention codes or by other titles as are deemed proper. See also s. 553.74(1)(e), F.S. which provides that one member of the Board of Building Codes and Standards must be "from fire

protection engineering or technology. "(Emphasis supplied.) Cf. ss. 633.05(1), and 633.051(1), F.S., supra. Part VI of Ch. 553, F.S., also expresses a legislative intent that its purpose is for the protection of public safety, health and general welfare. It is an established maxim of statutory construction that statutes which are enacted for the public benefit should be construed most favorably to the public. Vocelle v Knight Brothers Paper Company, 118 So.2d 664(1 D.C.A. Fla., 1960); Board of Public Instruction of Broward County v. Doran, 224 So. 2d 693 (Fla.1969). See generally 49 Fla. Jur. 2d Statutes s. 189; 73 Am. Jur. 2d Statutes s. 282; 3 Sutherland Statutory Construction s 71.04. And see Sunshine State News Company v. State, 121 So. 2d 705 (3D.C.A. Fla. 1960; Devin v.City of Hollywood, 351 So. 2d 1022 (4D.C.A.Fla. 1976) (uncertainty as to legislative intent should be resolved by interpretation which best accords with public benefits.) A construction which differentiates between the terms "fire safety" and "fire prevention" for purposes of part VI would, in my opinion, operate to make construction and application of part VI unduly complex.

As discussed in AGO 86-60, s. 633.15, F.S., provides that "this law, and all regulations prescribed by the State Fire Marshal hereunder, shall have the same force and effect in each and every incorporated town or city, as the ordinances of such respective municipalities, and shall be enforceable in the county courts in the same manner as such ordinances." The violation of any provision ch. 633, F.S., or any order, rule or regulation of the state Fire Marshal is declared to be a misdemeanor of the second degree. See s.633.17 1 (1), F.S. While s. 633.15 mandates that ch. 633 and all regulations promulgated thereunder by the StateFire Marshal have the force and effect of ordinances in all incorporated towns or cities, s. 553.73(8) en joins the superseding or supplementing of the fire safety standards enumerated in the State Minimum Building Codes adopted pursuant to s. 553.73, with two

exceptions. See Rule 4A-3.009(4), F.A.C., supra, directing that all occupancies which are not required by the Legislature to meet uniform fire safety standards must meet the minimum fire safety standards adopted by the State Fire Marshal. It is axiomatic that where conflicting provisions appear in different statutes, the last expression of legislative will is the law. Sharer v Hotel Corporation of American, 144 So.2d 813 (Fla. 1962); Kiesel v. Graham, 388 So. 2d 594(1D. C.A. Fla., 1980) petition for review denied, 397 So. 2d 778(Fla. 1981); Department of Health and Rehabilitative Services v. American Healthcorp of Vero Beach Inc. ,471So 2d 1312 (1 D.C.A.Fla.., 1985). AS noted, supra, sub-section (8) of s. 553.73 was adopted during the 1986 legislative session by s. 33, ch. 86-191, Laws of Florida; s. 633.15 F.S., was last amended by the Legislature in 1977, see ch. 77-119, Laws of Florida. Since s. 553.73(8),F.S., constitutes the last expression of legislative will, I must conclude that to the extent of any conflict between the two statutes the provisions of s.553.7318) prevail over s. 633.15. Accordingly, I am of the opinion that the fire safety standards as set forth in the State Mini- mum Building Codes adopted pursuant to s.553. 73,F. S., as amended by s.33, ch. 86-191 ,Laws of Florida supra , may not be superseded or supplemented except
as enumerated in s. 553.73(3), F.S., and s.633.05 (8), F. S., supra. See Williams v. American Surety Company of New York, 99 So.2d 877(2D.C.A. Fla.,1958) (where statute sets forth exceptions, no others may be implied to be intended). See also State Road Department v. Levato, 192 So. 2d 35(4D.C.A.Fla.1996), cert. discharged, 199 So. 2d 714(Fla. 1967); Biddle v. State Beverage Department, 187 So. 2d 65(4D.C.A. Fla., 1966), cert. dismissed, 194 So. 2d 623(Fla. 1966); State v. Nourse, 340 So. 2d 966 (3D.C.A.Fla.,1976) exceptions or provisos in statutes are to be strictly construed). However, as noted supra, s. 553.73 in setting forth the State Minimum

Building Codes to be adopted pursuant to that section, includes the Standard Building Code, excluding those provisions of said code relating to fire prevention. Accordingly, a municipality which adopts the Standard Building Code pursuant to s. 553.73 adopts such code without the standards of the code relating to fire prevention. While a municipality may adopt those standards of the Standard Building Code relating to fire prevention, such standards are adopted pursuant to its police powers and not pursuant to 553.73 and thus the provisions of sub- section (8) of s. 553.73 stating that the fire safety standards enumerated in the state Minimum Building Codes "adopted pursuant to [s.553.73] shall not be superseded or supplemented" except as provided therein would not be applicable. In such instance, it appears that the rules of the State Fire Marshal, including the Life Safety Code, apply as minimum fire safety standards to all occupancies, except for those which the Legislature has designated as subj ect to uniform fire safety standards. Rule 4A-3.002(4), F .A.C., supra. My review of the legislative history of s. 33, ch. 86-191, Laws of Florida, failed to reveal any clear evidence sufficient to override the plain language of the act. Accordingly, with regard to those buildings, structures and other entities not designated by the Legislature as subject to uniform fire safety standards, I continue to be of the opinion that to the extent a municipality, having adopted the Standard Building Code, may have enacted rrore stringent standards under its police power pertaining to fire protection than those contained in the Life Safety Code, the more stringent standard should prevail.

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT, NO. 03-10189, D.C. DOCKET NO. 01-00558-CV-ORL-19. In re: Raymond J. Cascella, Debtor. Raymond J. Cascella, Plaintiff-Appellant, vs Canaveral Port Authority, Defendant-Appellee. Appeal from the United States District Court for the Middle District of Florida. PETITION FOR REHEARING

ARGUMENT NUMBER ONE

The Panel failed to consider all the facts in the case as to the Rooker-Feldman Doctrine and the Jetco exception by the Panel's ruling that "he does not cite to any documents in the record that considered with dismissal, would have the effect of a final judgment".

In Petitioner Cascella's hereafter Cascella, Statement of the Case on page 4 of his initial brief he said:

> "Counsel for the Canaveral Port Authority was given twenty days to file with the court with a copy to Cascella, a copy of the administrative agency decision determining Cascella was not in violation of any fire safety or code issues. Doc 50" Canaveral Port Authority's Notice of Filing the stipulation and consent order relating To administrative Proceeding Doc 52. Appellant's Compliance to Honorable Judge Young's Sua Sponte Order to Produce Documents with exhibits Doc 51 and Appellant's Part two to Order to Produce Doc 53...."

The Panel failed to read or consider the fact that Cascella himself also filed documents from the administrative agency

because he did not trust the CPA and its attorneys. Attached is what they offered to Judge Young. Exhibit #1

Attached as Exhibit #2 Doc 51 & 53 which is in the record. This is the administrative judge's order and a binding re-inspection report by a state licensed Fire Inspector, Fire Marshal Watson. It is clear after the initial Show Cause Order on the tenant restaurant, Manos' Inc, trading as Sea Port Restaurant the final order included respondent Cascella who was co-petitioner for Administrative hearing; and a settlement and consent order was executed as ruled in ALJ Clark's order closing the file on the firewall issue in November 1997. The Fire Marshal Re-inspection Report is dated April 16, 1998 stating there is no violations. This occurring before Cascella filing his voluntary petition for Chapter 13 bankruptcy relief on April 6, 1999 over a tax issue and eviction for non-payment of new taxes.

Is there a reason CPA and its lawyers did not include the ALJ Clark's order and the binding Fire Marshal's report of no firewall violations that they submitted to Judge Young?

In this petition for rehearing the court must now decide by the facts it overlooked that it was the same issue in the county case and the administrative law case – the firewalls. This absolutely proves the issue was adjudicated before the bankruptcy petition and is precluded from being re-litigated in the Federal Courts. The Rooker-Feldman Doctrine applies as well as the Jetco exception.

MEMORANDUM OF LAW

The Fire Marshal's report is binding. Florida Statute Chapter 553, in particular 553.73(8)(e) says:

> "All decisions of the local building official and local fire official and all decisions of the administrative board shall be in writing and shall be binding upon all persons but shall not limit the authority of the State Fire Marshal pursuant to 633.161."

The State Fire Marshal is the Insurance Commissioner and a member of the Governor's Cabinet – an executive branch of government.

Under the rule of res judicata (sometimes called "claim preclusion") a plaintiff is barred from reasserting the claim.

RESTATEMENT OF JUDGMENTS 2d sec 17

Under collerateral estoppel (or "issue preclusion"), when an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between parties, even on a different claim.

Collateral estoppel applies despite a lack of mutuality.

The Supreme Court in UNIVERSITY OF TENNESSEE v. ELLIOTT 478 U.S. (1986) said:

> "We have previously recognized that it is sound policy to apply principles of issue preclusion to the factfinding of administrative bodies acting in a judicial capacity."

AND FURTHER on

> "we held in our unanimous decision in the

United States v. Utah Construction & Mining Co. 384 U.S. 394 (1996) that the Factfinding of the Advisory Board of Contract Appeals was binding in a subsequent Action in the Court of Claims involving a Contract dispute between the same parties.

ALSO

" federal courts must give the agency's factfinding the same preclusive effect to which it would be entitled in the State's courts."

Also there is a preclusion as to the CPA from litigating the firewall issue in any state or federal court because Fla. Chapter. 633, 052(2) says the political entity must create a code enforcement board to enforce fire safety code violations and to contest a citation it must be in the county court. Their counterclaim in circuit court, which they removed to federal court was illegal. Thus null and void. Also the CPA has no Code Enforcement Board.

CONCLUSION

The Panel must reverse its ruling based on the overlooked Facts that there was another case on the firewall issue other than the CPA's county case that was dismissed. And in the Administrative Law Case a settlement was reached after an administrative appeal the firewall issue between Cascella's restaurant tenant Manos, Inc./DBA Seaport, Cascella and the proper authority, State of Florida Agency of Hotels and Restaurants and the Department of Business and Professional Regulation. Also the firewall inspection proving no violation is binding and cannot be overruled by any State or Federal court, only by the State Fire Marshal himself.

ARGUMENT NUMBER TWO

The panel made a precedenting-setting error of exceptional importance because its interpretation of Title 28. U.S.C. Section 1334 and 1334(b) when Section 1334 (c) is The correct section to be applied in this instant case which is not a bar to Cascella's claim that Title 28 Section 1542(a) pre-empts the removal of a state case that is a "police or regulatory subject matter".

The panel ruled on its page 3: "To determine whether a civil action is related to a bankruptcy proceeding for purposes of section 1334(b), we consider whether "the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling administration of the bankrupt estate." In re Lemco Gypsum, Inc, 910 F.2d 784, 788 (11th Cir. 1990"

And "Thus, is a civil action does not fall within the exceptions in 1452(a) and is related to a case under Title 11, a district court may exercise jurisdiction upon removal of the action, See 28 U.S.C. 1452(a)...

In this instant case the panel on page 4 says the Firewall issue arose out of a landlord-tenant dispute and can pre-empt a policing action because the CPA's claim is related to Cascella's bankruptcy case.

Cascella cited RABZAK, Debtor. Bankruptcy No. 82-04003T United States Bankruptcy Court. E.D. Pennsylvania Nov 19, 1987, 79 Bankruptcy Reporter and the court said.

"We need not determine whether the subject of the summons is a core proceeding 28 U.S.C. 1452 expressly prohibits

removal of civil actions by governmental unit to enforce police or regulatory powers."

Cascella now cites the case In re PACIFIC GAS & ELEC. CO. 281 B.R. 1 (Bkrtcy N.D. Cal 2002) said on pg 2: "Claims asserted by California Attorney General and California municipality under the Unfair Competition Act, for debtor-utility's allegedly unlawful, unfair, and fraudulent pre-petition business acts and practices were in the nature of claims asserted under California's police and regulatory power, that were designed to protect public rather than to benefit private parties, and were not removal to federal court as result of debtor's Chapter 11 filing. 28 U.S.C.A. 1452 (a).

Cascella maintains the CPA cannot claim a Life Safety Code violation but because they have no administrative board they can only file a complaint with a proper agency to prosecute. They wear two hats. One as a Florida political subdivision and one as a landlord leasing a plot of earth to Cascella. They may perceive of a lease violation as to a firewall, but only a proper authority of a policing action can seek redress in court. Attached is exhibit 3, a ANNUAL REPORT OF THE ATTORNEY GENERAL.

On page 200 he said "However, since the Standard Building Code expressly and explicitly excludes those provisions pertaining to fire prevention would be pursuant to its police power rather than pursuant to s. 553.73(2)(a)."

The CPA's counterclaim was brought under Fla. Chapter 633 Fire Safety and it is clear by the Attorney General of Florida it is a policing action.

The Panel is erroneous by barring Cascella's claim of pre-emption by sec. 1452(a) by using sec 1334(b).

The Panel is at odds with the Third Circuit, United States Court of Appeals, in STEEL VALLEY AUTHOR. V UNION SWITCH & SIGNAL DIV. Citw as 809 F.2d 1006 (3rd Cir. 1987) the court said pg 1006 sec 3. In ruling on whether action should be remanded to state court from which is was removed, district court must focus on plaintiff's complaint at time petition for removal was filed.

In this instant case, the CPA removed a case where their counter-claim is null and void because years earlier it was resolved in the sub-tenant corporation and the debtors favor.

The Panel is at odds with the Supreme Court in BLATCHFORD v. NATIVE VILLAGE OD NOATAK, 501 U.S., (111 S. Ct. 2578, 2583, 115 L. Ed. 2d. 686, 1991) which said, "The fact that Congress grants jurisdiction to hear a claim does not suffice to show Congress has abrogated all defenses to that claim."

Cascella maintains 1452(a) is a defense on subject matter jurisdictional grounds.

The Panel is at odds with the First Circuit U.S. Court of Appeals. The court in CUMBERLAND FARMS INC. Appellant v. FLORIDA DEPARTMENT Of ENVIRONMENTAL PROTECTION 116 F3d 16 (1st Cir. 1997) said: "(1) Bankruptcy court was not proper forum to determine debtor's compliance with state petroleum liability insurance program".

It was improper for the CPA to claim a firewall violation by Fla. Ch. 633 on debtor. The violator was the public restaurant which he did not own though they removed the issue of firewalls against Cascella to bankruptcy court; the action can only be over compliance with the Department of

The Panel infers that the CPA has a claim on the debtor by Title 11 sec 101(5). And section b says a claim is: "(B) right to an equitable remedy for breach of performance is such breach gives rise to a right to payment."

But 1334(c)(2) prohibits actions that could not have been commenced in a court of the United States absent jurisdiction under this section.

The allege violator of the state fire code was not the landlord leasee debtor Cascella, but his sub-tenant, a corporate restaurant who is not a proper person, nor is a debtor in bankruptcy court. Cascella does not come under the control of Fla. Stat. 633 but the public restaurant does.

On page 3 the Panel claims there is either a positive or negative claim on the estate of the bankrupt.

The Supreme Court in OHIO v KOVACS 469 U.S. 274, 83 L.Ed 2d 649, 105 S. Ct. 705 said pg 650 that "the right to an equitable remedy for breach of performance if such breach gives rise to a right to payment". The CPA has no such claim. They have a claim if they can force an eviction on the property for damages if the rent was not paid by virtue of the clause in the leases. But an evicted tenant can still pay the rent until the CPA gets another tenant. A hypothetical claim is not a claim.

The CPA's only action was Cascella breached a Florida Safety Fire Statute. They get no money and thus there is no legal claim on the estate. In fact there was no injunction; no negative affect at all.

Insurance, Fire Marshal Statute like the state petroleum insurance program laws in the above cited case.

The Panel is at odds with the Supreme Court in re DOW CORNING CORP. CA6 (MICH) 1966, 86f3d 482 certior denied 117 S.Ct. 718, 519 U.S. 1071, 136 L Ed 2d 636 because they did not rule Mandatory Abstention applies because there is a lack of federal jurisdiction absent of bankruptcy, was already commenced in state forum of appropriate jurisdiction (even though in this instant case the only state jurisdiction was administrative county court (which is not a court of record in Florida)), was capable of timely jurisdiction and was non core.

The Panel fails to realize that by applicable Florida law even assuming arguendo the debtor was a violator, the only penalty that can be adjudicated is an order to correct the code violation in so many days. This cannot affect the estate. When there is no compliance – which is not even an issue in this instant case – an application for injunction is mandatory, which due to public safety closes the restaurant, which is not property of the estate.

Here is a HYPOTHETICAL: Cascella rents the restaurant to a company that makes Lobster traps. Period. The fire code then does not apply because it is not a public restaurant. The estate is not impacted positively or negatively by the policing action.

CONCLUSION

Because of the petitioner's above two arguments the court must grant his Petition for Re-hearing.

BY_____
Raymond J. Cascella
515 Newfound Harbor Dr.
Merritt Island, FL 32952

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Appellant's motions has been furnished to Appellee's attorneys of record, Mr. Glenn Jensen and Mr. Eric Dentel, of the law firm Akerman, Senterfit & Eidson, P.O. Box 231, Orlando, Florida 32802-0231, by first-class mail this 17th day of July 2003.

BY_____
Raymond J. Cascella
515 Newfound Harbor Dr.
Merritt Island, FL 32952

UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA ORLANDO DIVISION
RAYMOND J. CASCELLA, Appellant,
vs. CASE NO.: 6:01-CV-558-0RL-O6KRS CANAVERAL PORT AUTHORITY, Appellee.

CANAVERAL PORT AUTHORITY'S NOTICE OF FILING THE STIPULATION AND CONSENT ORDER RELATING TO THE ADMINISTRATIVE PROCEEDING

Appellee, Canaveral Port Authority ("CPA"), by and through its undersigned counsel, files the stipulation and consent order with a certification attached thereto relating to the administrative proceeding styled The Department of Business and Professional Regulation. and Raymond J. Cascella, Case No. 97-1735, and states: 1. On October 15, 2002, the court heard oral argunlent in the appeal of adversary proceeding 99-107. At the hearing, the appellant Raymond J. Cascella ("Cascella") raised for the first-time in t~1e appeal that the bankruptcy court could not try the adversary proceeding because (i) a state appellate court had ruled in Cascella's favor as to the declaratory action prior to the removal of the state court lawsuit to federal bankruptcy court, and (ii) an administrative proceeding found that Cascella was not required to construct fire-walls inside the restaurant. The court directed CPA to deliver a copy of the order from the administrative proceeding and directed Cascella to deliver a copy of the state appellate court judgment within 20 days of October 15, 2002. By certified letter dated October 19, 2002, CPA sent Cascella a copy of the state appellate court's *per curiam* order dated March 6, 1998.1 2. At the court's request, CPA obtained a copy of the stipulation and consent order in the case styled The Department of Business and Professional Regulation, Division of Hotels and Restaurants,v.Manos inc.,d/b/a Seaport Restaurant and Raymond j. Cascella Case No. 97-

1735. Sea exhibit A3. By the attached Exhibit" A," it is clear that (i) CPA was not a party to the administrative proceeding, (ii) the stipulation and consent order did not become a final order because it was not signed by the parties, and (iii) Cascella was in fact in violation of an ordinance by failing to construct the required fire-walls inside the restaurant. Respectfully submitted, /s_____ Glenn *Jen* sen, Esquire Florida Bar Number: 126070 AKERMAN **SENTERFITT Citrus Center, 17th Floor**255 South Orange Avenue PostOffice Box 231 Orlando, Florida 32802 Telephone Number: (407) 843-7860 Facsimile Number: (407) 843-6610 1 None *of* the items the court directed the parties to deliver were designated on appeal by Cascella. Accordingly, CPA does not consent to having these items included in the record on appeal. Exhibit A

STATE OF FLORIDA

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION **CERTIFICATION** I, Sarah L. Wachman, Agency Clerk and Custodian of Records for the Department of Business and Professional Regulation hereby certify that the attached unexecuted Stipulation and Consent Order in case styled *The Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco vs. Manos, Inc. d/b/a Sea Port, alkla Lighthouse* (D.O.A.H. Case No. 97-1735, D.B.P .R. Case No. 04-97-021) is an exact copy of the Stipulation and Consent Order maintained in the files of the Agency Clerk's Office within the Department of Business and Professional Regulation. This record is made, received and retained in the ordinary course of business by the Department of Business and Professional Regulation. I further certify that no executed copy of the attached Stipulation and Consent Order exists in the official records of the Department and that no Final Order has ever been issued by the Department in the above-styled action. In my capacity as Agency Clerk and Custodian of Records, I

hereby certify that the seal affixed to this instrument is the true seal of the Florida Department of Business and Professional Regulation.
Witness my hand and seal this 24th day of October, 2002.
Sarah L. Wachman Agency Clerk /s_____
Personally appeared before me, the undersigned authority, Sarah L. Wachman, Agency Clerk for the Department of Business and Professional Regulation, who being sworn, says that the fixed seal is the official seal of the Department of Business and Professional Regulation, a state agency.
STATE OF FLORIDA COUNTY OF LEON Before me, personally appeared, Sarah L. Wachman, whose identity is personally known to me as Department Agency Clerk, and who, acknowledges that her signature appears above. Sworn and Subscribed to, before me this 24th day of October, 2002.
notary Public-State of Florida ELLEN L. CARTER
EXPIRES: July 9. 2006 Notary ,

STATE OF FLORIDA DEP ARTMENT OF BUSINESS AND PROFESSIONAL REGULATION DIVISION OF HOTELS .A.ND RESTAURANTS DIVISION OF HOTELS AND RESTAURANTS, DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, STATE OF FLORIDA Petitioner, vs. LICENSE NO: 15-03843-R ~ASE NO: 04-97-021 MANO'S II\iC., d/b/a DOAH NO: 97-1735 SEA PORT RESTAURANT Respondent. STIPULA TION AND CONSENT ORDER The Petitioner, Division of Hotels and Restaurants, Department of Business and Professional Regulation, State of Florida, hereinafter the Division, and the above-named Respondent, pursuant to authority of Section 509.261, Florida Statutes (1995), stipulate and agree that: WHEREAS, upon inspectiont the Division determined that the Respondent violated a certain local ordinance relating to the inspection and regulation of public food service - establishments and public lodging establishments; and WEREAS, the parties desire to settle this cause without further judicial or administrative proceedings; NOW THEREFORE, the Respondent and the Division agree to the following Stipulation and Consent Order (hereinafter Order): FINDINGS OF FACT

1. At all times relevant hereto Respondent held the Division license identified in the above sty1e of this case for a public food service establishment. 2. The condition of the subject establishment, as described in the Division's attached Notice to Show Cause dated January 14, 1997 (hereinafter Notice), are incorporated herein by reference and are deemed to accurately state the relevant facts supporting the charges in the Notice. 3. Based on the pre-conference inspection, the current condition of the subject establishment is that of non-compliance with the requirement of the ordinance.

4. The undersigned hereby represents and warrants that he/she is the operator of the " referenced establishment or is authorized to act on behalf of the operator. CONCLUSIONS

OF LAW 5. The Division has jurisdiction in this case pursuant to Section 509.032, Florida Statutes. 6. Subsections 509.261(1), (2) and (3), Florida Statutes, state as follows: (1) Any public lodging establishment or public food service establishment that has operated or is operating in violation of this chapter or the rules of the division operating without a license, or operating with a suspended or revoked license may be subject by the division to:(a) Fines not to exceed $1,000 per offense; (b) Mandatory attendance, at personal expense, at an educational program sponsored by the Hospitality Education Program; and (c) The suspension, revocation, or refusal of a license issued pursuant to this chapter. (2) For the purposes of this section, the division may regard as a separate offense each day or portion of a day on which an establishment is operated in violation of a "critical law or rule", as that term is defined by rule. (3) The division shall post a prominent closed-tor-operation sign on any public lodging establishment or public food service establishment. the license of which has been suspended or revoked. The division shall also post such sign on any establishment judicially or administratively determined to be operating without a license. It is a misdemeanor of the second degree. punishable as provided in s. 775.082. F.S., or s. 775.083, F.S., for any person to deface or remove such closed-for-operation sign or for any public lodging establishment or public food service establishment to open for operation without a license or to open for operation while its license is suspended or revoked. The division may impose administrative sanctions for violations of this section.

7. The conditions of the establishment of Respondent, described by reference in paragraph 2 of the Findings of Fact above, constitute apparent violations of statutes or rules as described in the Notice referenced above. However. Respondent has challenged the validity of the ordinance which creates the imposed standard. No separate law or rule

of the Division requires a fire wall in a public food ser\'ice establishment. ORDER 8. It is hereby ordered and agreed that Respondent shall Comply with this ordinance within 30 days of the entry of a final order unless a court of competent jurisdiction excuses compliance by the Respondent. 9. The parties agree that in the event Respondent fails to comply with any or all of the requirements noted in paragraph 8 above. Respondent may be cited and other administrative action may be taken. 10. Respondent and the Division acknowledge and agree that this Stipulation and Consent Order constitutes the Final Order of the Division respecting the matters set forth above and that Respondent, waives any and all rights to further administrative proceedings and/or judicial review. 11. The parties agree that Respondent, through the rendition of this Consent Order, is not a "prevailing small business party" as that term is defined by Section 57.111, Florida Statutes, and it is mutually agreed that Respondent shall bear its own costs and attorney's fees. In the event the Respondent fails to comply with any provision of this Order, the parties agree that this Stipulation and Consent Order is directly enforceable as provided for in Section 120.69, Florida Statutes, and the Division may obtain attorney's fees from the Respondent for necessary enforcement action on this Order in the courts of this State. Should enforcement be required, Respondent hereby waives any and all rights to venue and agrees that this Order is directly enforceable by petition in the Leon County Circuit Court of Florida. DATED this day of , 19 . and Licensee/Representative Division Agent Title Title The above and foregoing Stipulation and Consent Order is approved. DONE AND ORDERED: This day of . 19 . Director or Designee, Division of Hotels and Restaurants This Order is effective only upon approval by the Division Director or Designee. In the event such approval is not granted, the Respondent hereby requests an administrative

hearing on the charges. It is understood that in the event of disapproval, the underlying Notice will be set on the next available docket for hearing, and any administrative fine payment shall be immediately returned to Respondent. Remainder of page left blank intentionally STATE OF FLORIDA
DEPARTMENT *OF* BUSINESS AND PROFESSIONAL REGULATION DIVISION OF HOTELS AND RESTAURANTS NORTHWOOD CENTER
1940 NORTH MONROE STREET
TALLAHASSEE. FLORIDA 32399-1011

CASE NO. 04-97-021

NOTICE TO SHOW CAUSE NOTICE IS HEREBY GIVEN TO SHOW CAUSE WHY YOUR LICENSE ISSUED BY THE DIVISION OF HOTELS AND RESTAURANTS SHOULD NOT BE -SUSPENDED OR REVOKED OR HAVE AN ADMINISTRATIVE FINE ASSESSED. LICENSE NUMBER: 15-03843 R YOU: MANO'S INC TRADING AS: SEA PORT RESTAURANT

LOCATED AT: 68-0 GEORGE J KING BLVD PORT CANAVERAL. FL 32920are hereby notified by the Director of the Division of Hotels and Restaurants. Department of Business and Professional Regulation. State of Florida. that he has been presented certain evidence which. if true. is good and sufficient cause for him. pursuant to Chapter *509.* Florida \ Statutes, to assess an administrative fine against you or to suspend or revoke the Division of Hotels and Restaurants license issued to you-by the State of Florida under the laws of Florida for the current license year. or any renewal thereof. over which the Division of Hotels and Restaurants has jurisdiction. said cause being for anyone of the allegation set forth on the attached violation page:

NOTICE OF INFORMAL CONFERENCE An informal conference regarding these charges has been scheduled at: DIVISION Of HOTELS AND RESTAURANTS 400 West Robinson Street. North Tower Suite 509. Orlando. Florida on Jan *30.* 1997 at 1: 15 pm to determine if you desire an administrative hearing or if you. wish to stipulate to the charges. At that time. you may present any mitigating circumstances which may' exist and you will have an Opportunity to show that you have complied With all lawful requirements for the retention of your license. You may attend the informal conference with or without counsel. " RIGHT TO A HEARING If the case cannot be resolved at the informal conference or if you do not attend the informal conference. you may request a hearing on these charges in accordance with Chapter 120. Florida Statutes. SEA PORT RESTAURANT 680 George J King Blvd, Port Canaveral - 32920 15-03843 R It is alleged that on October 31, 1996 and November 13. 1996 the licensee was in violation of Florida Statute 509 and *lor* the Rules of the Division of Hotels and Restaurants, Florida Administrative Code, in the following particulars: 1. 509.032 (1) ,FS DUTIES - GENERAL: THE DIVISION SHALL CARRY OUT ALL OF THE PROVISIONS OF THIS CHAPTER AND ALL OTHER APPLICABLE L.AWS AND RULES RELATING TO THE INSPECTION OR REGULATION OF PUBLIC LODGING ESTABLISHMENTS _n~ PUBLIC FOOD SERVICE ESTABLISHMENTS FOR THE PURPOSE OF SAFEGUARDING THE PUBLIC HEALTH, SAFETY, AND WELFARE. (37) VIOLATION: Failed to comply with the local fire authority on providing or repairing firewalls in the establishment as cited byFire Marshall, Dave Sargeant, Cape Canaveral. ". BPR.21-040 LICENSE NO. 15-03843 R 09.29-93 CASE NO. 04"..97-021 If you wish to request a hearing, you must file a written request on the attached form

Your Written request for hearing must be received by the Division of Hotels and Restaurants or must be postmarked no later than 14 day's following the above stated schedule date of the informal conference. The written request for a hearing must be filed with the Division of Hotels and Restaurants district office, The Director will determine whether there are disputed issues of material fact necessitating a formal hearing under Section 120.57(1), Florida Statutes. If it is determined that there are no disputed issues of fact, you will be given an informal hearing pursuant to Section 120.57(2);-- Florida Statutes. If there is a formal hearing, you have the right to appear in person on your own behalf, be .. represented by your attorney, to bring witnesses and evidence, and to cross-examine any witnesses produced against you by the .State, and to have subpoena duces tecum issued on your behalf. If there is an informal hearing, you have the right to appear in person on your own behalf, be represented by your attorney, or submit in writing whatever information you desire the Division to consider in reaching a decision in your case. If your written request is not received or postmarked within the 14 day period allowed, a final order of Default will be entered against you. This Order could require the suspension or revocation of your Division of Hotels-and Restaurants license or imposition of an administrative fine DATED THIS 14t h DAY OF Jan 1997 DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION DIVISION OF HOTELS AND RESTAURANTS BY: /s_____ CHESTER J. COLE DISTRICT ADMINISTRATOR; **CERTIFICATE OF SERVICE** I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand this ~ day of October, 2002 to Raymond *J.* Cascella, 515 Newfound Harbor Drive, Merritt Island, FL 32952.

UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA ORLANDO DIVISION
In re RAYMOND J. CASCELLA, Debtor, RAYMOND J. CASCELLA, Appellant,
Case No: 6:01-cv-558-Orl-06KRS Vs CANAVERAL PORT AUTHORITY " Appellee.

APPELANT'S COMPLIANCE TO HONORABLE JUDGE YOUNG'S SUA SPONTE ORDER TO PRODUCE DOCUMENTS

Appellant Raymond Cacsella produces the following items:
1. Mandate from the District Court of Appeal of the State of Florida and Opinion filed March 6,1998 for the trial court case number 96-16568-CA-N and
2. Letter from Agency Clerk Sarah L. Wachman dated October 25,2002. 3. Certification by the Agency Clark Sarah L. Wachman
4. Letter by James Watson, Fire Marshal, Cape Canaveral Fire Department stating all fire safety violations have been corrected.
5. Order Closing File because the parties having executed a settlement and consent order. AND
6 A copy of the Designation of Record On Appeal submitted by Defendant/Appellee, Canaveral Port Authority designating docket number 48. This represents Exhibit List For Plaintiff filed in open court. The last page in Tab 23 is the Order Closing File. And Tab 24 contains the fire marshals confirmation of no fire safety violations dated April 16,1998. This is 1 full year before appellee Canaveral Port Authority removed case 99- 09682-CA -F to Bankruptcy court on May 3rd 1999. I HEREBY CERTIFY that a copy bas been mailed on Oct.31,2002 to W. Glenn Jensen, P.O.Box 231, Orlando Florida 32802-P.O. Box 0231 Orlando Fl. By Raymond J. Cascella

MANDATE from DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FIFTH DISTRICT THIS CAUSE HAVING BEEN BROUGHT TO THIS COURT BY APPEAL DUE CONSIDERATION THE COURT HAVING ISSUED ITS OPINION YOU ARE HEREBY COMMANDED THAT SUCH FURTHER PROCEEDINGS BE HAD IN SAID CAUSE IN ACCORDANCE WITH THE OPINION OF THIS COURT ATTACHED HERETO AND INCORPORATED AS PART OF THIS ORDER, AND WITH THE RULES OF PROCEDURE AND LAWS OF THE STATE OF FLORIDA.

WITNESS THE HONORABLE JAQUELINE R. GRIFFIN CHIEF JUDGE OF THE DISTRICTCOURT OF APPEAL OF THE STATE OF FLORIDA, FIFTH DISTRICT, AND THE SEAL OF THE SAID COURT AT DAYTONA BEACH, FLORIDA ON THIS DAY.
DATE: March 25, 1998:
FIFTH DCA CASE NO. 97-737. COUNTY OF ORIGIN: Brevard TRIAL COURT CASE NO. 96-16568-CA-N
FRANK J. HABERSHAW, CLERK IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FIFTH DISTRICT JANUARY TERM 1998 RAYMOND CASCELLA
Appellantv. CASE NO. 97-737 CANAVERAL PORT AUTHORITY, etc., Appellee.

Opinion Filed March 6, 1998 Appeal from the Circuit Court for Brevard County, Warren Burk, Judge
Allen C.D. Scott, Il, and Holly E. Scott, of Scott & Scott, Attorneys at Law, P.A., St. Augustine, for Appellant.

Frank J. Griffith, Jr., of Strom ire, Bistline, Miniclier, McDermott & Griffith, Cocoa, for Appellee.PER CURIAM.

REVERSED. Ch, 86, Fla. Stat. (1997). GRIFFIN, C..J., GOSHORN and ANTOON, JJ., concur.

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION October 25, *2002* Raymond Cascella 515 Newfound Harbor Drive Merritt Island, Florida 32952 RE: Records Request - Mano's Inc, d/b/a Sea Port a/k/a Lighthouse 32399-2202 D.O.A.H. Case No. 97-1735, D.B.P. R. Case No. 04-97-021 Dear Mr. Cascella:

Attached please find a certified copy of the above-referenced case. Please feel free to contact our office if you need further information. Sincerely, Sarah L. Wachman, Agency Clerk Enclosure

STATE OF FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION CERTIFICATION

I, Sarah L. Wachman, Agency Clerk and Custodian of Records for the Department of Business and Professional Regulation hereby certify that the attached documents in the case styled The Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco vs. Manos, Inc. d/b/a Sea Port, a/k/a Lighthouse (D.O.A.H. Case No. 97-1735, D.B.P.R. Case 1 04-97-021), page numbers 1 through 146, are exact copies of all such documents maintained in the files of the Agency Clerk's Office within the Department Of Business and Professional Regulation. These records are made received and retained in the ordinary course of business by the Department of Business and Professional Regulation. In my capacity as Agency Clerk and Custodian of Records, I hereby certify that the seal affixed to this document is the true seal of the Florida Department of Business and Professional Regulation.

Witness my hand and seal this 24th day of October, 2002.
Sarah L. Wachman Agency Clerk

CAPE CANAVERAL VOLUNTEER FIRE DEPARTMENT, INC. Serving the city of Cape Canaveral & Canaveral Port Authority

TO: Ray Cascella FROM: James Watson, Fire Marshal
SUBJECT: Fire Safety Inspection 680 George King
DATE: April 16, 1998 On the above date a reinspection of Seaport Restaurant was completed. All fire safety violations have been corrected. Please feel free to contact this office if you have any question. James Watson Fire Marshal Cape Canaveral Fire Department 190 JACKSON AVENUE. CAPE CANAVERAL, FLORIDA 32920 . (407) 783-4777

STATE OF FLORIDA DIVISION OF ADMINISTRATIVE HEARINGS DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, DIVISION) OF HOTELS and RESTAURANTS, Petitioner, vs. Case No. 97-1735) MANO'S INC., trading as SEA PORT RESTAURANT, and RAYMOND CASCELLA Respondents. ORDER CLOSING FILE The parties have executed a settlement and consent order, and the file of the Division ofAdministrative Hearings is hereby CLOSED. DONE AND ORDERED this day of November, 1997, in Tallahassee, Leon County, Florida. /s/ MARY CLARK

Administrative Law Judge Division of Administrative Hearings The DeSoto Building 1230 Apalachee Parkway Tallahassee, Florida 32399-3060 (904) 488-9675 SUNCOM 278-9675 Fax Filing (904) 921-6847

Filed with the Clerk of the Division of Administrative Hearings this 14th day of November, 1997.

COPIES FURNISHED: Scott R. Fransen, Esquire'
Department of Business and Professional Regulation
1940 North Monroe Street, Tallahassee, Florida 32399-1007

Personally appeared before me, the undersigned authority, Sarah L. Wachman, Department Agency Clerk, Department of Business and Professional Regulation, who being sworn, says that the fixed seal is the official seal of the Department of Business and Professional Regulation, a state agency.

/s/_____S a r a h L. Wach man
Agency Clerk STATE OF FLORI DA COUNTY OF LEON
Before me, personally appeared, Sarah L. Wachman, whose identity is personally known to me as Department Agency Clerk, and who, acknowledges that her signature appears above. Sworn and Subscribed to, before me this 24th day of September, 2002. Notary Public-State of
Florida/s/_____ELLEN L CARTER

UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORJDA ORI,ANDO. DIVI SION
In re RAYMOND J. CASCELLA Debtor, RAYMOND J. CASCELLA, Appellant, Case No.6-O1-cv-558-Orl-O6KRS
Vs. CANAVERAL PORT AUTHORITY , Appellee
APPELLANT'S PART TWO TO ORDER TO PRODUCE
Appellant, Raymond J. Cascella, produces the following item: 1. Letter by James Watson, Fire Marshal, Cape Canaveral Fire Department stating all fire safety violations have been corrected. Dated April 16, 1998. This was also attached as exhibit in Part I submitted on October 31,2002.

Florida 18th Circuit Court case No. 96-16568-CA -N captioned Raymond Cascella vs Canaveral Port Authority was the declaratory relief action that was consolidated with other cases that CPA Removed to Bankruptcy Court. This case was filed in 1996.

And removed 1 year after the fire wall settlement was resolved in Administrative Court. BY - Raymond Cascella 515 Newfound Harbor Dr. Merritt Island, Fla 32952. I HEREBY CERTIFY that on November 2, 2002 a copy was Jensen, P.O. Box 23J, Orlando Florida 32802-0231, 515 Newfound Harbor Dr. Merritt Island, Fla. 32952

CAPE CANAVERAL VOLUNTEER FIRE DEPARTMENT, INC. Serving the city of Cape Canaveral & Canaveral Port Authority TO: Ray Cascella FROM: James Watson. Fire Marshal - SUBJECT: Fire Safety Inspection 680 George King DATE: April 16,1998 On the above date a re-inspection of Seaport Restaurant was completed. All fire safety violations have been corrected. Please feel free to contact this office if you have any question. s/_____James Watson Cape Canaveral Fire Department 190 Jackson Avenue Cape Canaveral Florida (407) 783-4777

In the United States Court of Appeals for the Eleventh District No. 02-16550-D; Dist. Ct. Docket No. 01-00558-CV-ORL-06 IN RE: RAYMOND J. CASCELLA, Petitioner. On Petition for Writ of Mandamus to the United States District Court for the Middle District of Florida-- **BEFORE:** BARKETT and HULL, Circuit Judges **BY THE COURT:** Raymond J. Cascella moves for reconsideration of this Court's February 7, 2003, order dismissing his petition for

writ of mandamus and prohibition. A party seeking rehearing or reconsideration must specifically allege any point of law or fact that this Court overlooked or misapprehended. See Fed.R.App.P.40. In this case, Cascella merely reiterates the arguments from his original mandamus petition, and he fails to allege any point of law or fact that this Court overlooked or misapprehended. Accordingly, his motion for reconsideration is **DENIED.** Filed Apr 07, 2003.